SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT 308 HON. CHARLES MC COY, JUDGE
RICHARD BOEKEN,)
)
PLAINTIFF,)
)
)
) CASE NO. BC226593
VS.)
)
PHILIP MORRIS,)
INCORPORATED, A)
CORPORATION; INTERNATIONAL)
HOUSE OF PANCAKES)
INCORPORATED, A)
CORPORATION.
)
DEFENDANTS.)
_____)

REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
FRIDAY, APRIL 20TH, 2001
APPEARANCES:
(FOR PLAINTIFF) LAW OFFICES OF
MICHAEL J. PIUZE
11755 WILSHIRE BLVD.
SUITE 1170
LOS ANGELES, CA 90025
(FOR DEFENDANTS) ARNOLD & PORTER
BY: MAURICE A. LEITER
JOHN CARLTON
777 S. FIGUEROA ST.
44TH FLOOR
LOS ANGELES, CA 90017

LISA C. RIDLEY
OFFICIAL REPORTER
600 S. COMMONWEALTH AVE.
ROOM 308
LOS ANGELES, CA 90005

VOLUME 21 OF
PAGES 3166 THROUGH 3359

LOS ANGELES, CALIFORNIA; FRIDAY, APRIL 20TH, 2001
9:00 A.M.
DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

(THE FOLLOWING PROCEEDINGS
WERE HELD IN OPEN COURT IN
THE PRESENCE OF THE JURY.)

THE COURT: GOOD MORNING. OUR JURY PANEL
IS WITH US. COUNSEL ARE PRESENT.
THE WITNESS IS ON THE STAND.
SIR, YOU UNDERSTAND YOU ARE STILL
UNDER OATH?
THE WITNESS: I DO, SIR.
THE COURT: VERY WELL.
MR. PIUZE.

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Digitized by http://industrydocuments.ucsf.edu/docs/nnxl0001

18
19
20 G. DONALD FERREE,
21 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN
22 PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND
23 AND TESTIFIED FURTHER AS FOLLOWS:
24
25 DIRECT EXAMINATION (RESUMED)
26
27 BY MR. PIUZE:
28 Q. HERE'S THE NEXT ONE, WHICH IS 502.
3167
1 WHOSE HANDWRITING IS THIS ON THAT?
2 A. MINE.
3 Q. IT'S A GOOD THING WE ARE NOT GOING
4 TO READ IT.
5 WHAT'S THIS, PLEASE.
6 A. THIS IS ALSO A SLIDE ORIGINALLY FOR
7 THE MELE PRESENTATION I MADE THAT EMPHASIZES THE
8 DISTINCTION BETWEEN HEARING ALLEGATIONS OF
9 SOMETHING AND BELIEVING THE TRUTH OF THOSE
10 ALLEGATIONS.
11 IT SHOWS THE RESULTS OF TWO SURVEY
12 QUESTIONS ASKED BY GALLUP ON, THE FIRST IN 1954
13 THAT WE DISCUSSED IN SOME DETAIL YESTERDAY, THE
14 SECOND IN '99 THAT REPEATED THE TWO EARLIER
15 QUESTIONS ABOUT HAVING, WHETHER PEOPLE HAD HEARD
16 REPORTS ABOUT CIGARETTE SMOKING BEING ONE OF THE
17 CAUSES OF LUNG CANCER AND WHETHER THEY BELIEVED IT.
18 WHAT IT DEMONSTRATES IS THAT WHILE
19 THE PROPORTION OF PERSONS WHO SAID THEY HEARD
20 REPORTS THAT LUNG CANCER -- CIGARETTES MIGHT BE THE
21 CAUSE OF LUNG CANCER ACTUALLY WAS LOWER IN '99
22 BECAUSE IT WAS A MATTER OF LESS MEDIA ATTENTION AND
23 THE LIKE. THE PROPORTION WHO SAID THAT THEY
24 BELIEVED THAT CIGARETTE SMOKING WAS A CAUSE OF LUNG
25 CANCER HAD SHARPLY INCREASED TO APPROXIMATELY 93
26 PERCENT BY 1999. DEMONSTRATING VERY CLEARLY THAT
27 ONE CANNOT USE A QUESTION OF WHETHER OR NOT PEOPLE
28 HAVE HEARD REPORTS AS A SURROGATE FOR WHETHER OR
3168
1 NOT PEOPLE BELIEVED THE SUBSTANCE OF THOSE REPORTS.
2 Q. OKAY. WELL, I GUESS THIS ISN'T THE
3 BEST CHART IN THE WORLD. THESE THINGS ARE ALL --
4 THEY ARE JUST DIFFERENT SHADES OF DARK.
5 A. THE LEFT HAND, THE LEFT-HAND PART
6 OF EACH GRAPH IS A PROPORTION THAT THEY HAD HEARD.
7 Q. OR BELIEVED?
8 A. AND THE RIGHT-HAND PART OF EACH IS
9 THE PORTIONS THAT SAID THEY BELIEVED THAT CIGARETTE
10 SMOKING WAS THE CAUSE OF LUNG CANCER.
11 Q. BY 1999 IT LOOKED LIKE THERE WERE
12 MORE PEOPLE THAT BELIEVED CIGARETTE SMOKING WAS THE
13 CAUSE OF LUNG CANCER THAN EVEN HEARD IT?
14 A. THAT IS CORRECT. AND THE REASON
15 FOR THAT IS THERE WAS LESS MEDIA ATTENTION TO THE
16 CONTROVERSY ABOUT THE HEALTH EFFECTS OF CIGARETTE
17 SMOKING IN '99 THAN THERE WAS IN '54. ONE CAN HEAR
18 REPORTS OF A CONTROVERSY WITHOUT NECESSARILY
19 BELIEVING IT, JUST AS IT IS POSSIBLE TO BELIEVE
20 SOMETHING WITHOUT HAVING HEARD REPORTS ABOUT A
21 PARTICULAR CONTROVERSY.
22 Q. WHAT CONTROVERSY ARE YOU TALKING

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Digitized by http://industrydocuments.ucsf.edu/docs/nnxl0001

ABOUT?
A. AS TO WHETHER OR NOT CIGARETTES ARE PERCEIVED AS A CAUSE OF LUNG CANCER.
Q. OKAY. LET'S JUST STICK WITH THIS FOR A SECOND HERE.
THIS IS A 45-YEAR JUMP IN HERE;

3169

RIGHT?
A. THAT IS CORRECT.
Q. AND ONE BIG LEAP FROM '54 TO '99?
A. THOSE ARE SHOWING TWO QUESTIONS IN THE TREND, THAT WERE FIRST, OF COURSE, IN THE MIDDLE, I WAS DEMONSTRATING THE DISTINCTION BETWEEN THE TWO DIFFERENT POINTS IN TIME SO THESE ARE REPRESENTATIVE QUESTIONS. THAT'S NOT EVERY TIME THE QUESTIONS WERE ASKED.
Q. SO FOR YOUNGER PEOPLE, INCLUDING YOUNGER JURORS, ATTITUDES THAT THEY GREW UP WITH NOW ARE A HECK OF A LOT DIFFERENT THAN WHEN MR. BOEKEN STARTED SMOKING?
A. VERY MUCH SO. VERY MUCH SO.
Q. ALL RIGHT. HERE IS 8002.503.

* (EXHIBIT 8002.503, POLLING DOCUMENT, MARKED FOR I.D.)

Q BY MR. PIUZE: NOW, WHY DO YOU WANT ME TO SHOW THIS?
A. THIS WAS DEMONSTRATING THE SITUATION IN 1998 WHICH CONTRASTS SHARPLY WITH WHAT WAS PRESENT IN EARLIER SURVEY MATERIALS IN THE '50'S, '60'S AND 70'S IN PARTICULAR.
IT PUTS CIGARETTE SMOKING IN A LIST OF RISK FACTORS AS PEOPLE PERCEIVED THEM. THIS COMES FROM A 1998 PUBLIC SURVEY BY THE ROPER

3170

ORGANIZATION RATING THE PERCENTAGE OF PEOPLE WHO BELIEVED THAT EITHER ANY USE AT ALL OR EXCESSIVE USE OF VARIOUS SUBSTANCES POSED A HEALTH RISK TO THEM.
YOU CAN'T EASILY SEE IT IN THE REPRODUCTION. EACH OF THE BARS HAS TWO PARTS AND I CAN SUMMARIZE WHAT THEY SAY, SHOWING THE PROPORTION OF PEOPLE WHO BELIEVED THAT ANY USE OF THE SUBSTANCE WAS DANGEROUS AND THOSE WHO BELIEVED THAT EXCESSIVE USE OR USING THE SUBSTANCE TO EXCESS WAS DANGEROUS.
NOW, THIS IS THE SITUATION IN 1998, IT CONTRASTS SHARPLY WITH SURVEY DATA WHICH I OBSERVED FROM EARLIER YEARS IN SEVERAL WAYS.
ONE IS THAT SMOKING CLEARLY, IF YOU COMBINE THOSE WHO SAY IT IS A RISK TO ANY AMOUNT OR TO EXCESS, IS AT LEAST ON PAR WITH ALL OF THE OTHER RISK AND, INDEED, SLIGHTLY HIGHER THAN EACH OF THOSE THAT IS LISTED THERE.
SECONDLY, THOUGH THIS IS NOT TERRIBLY CLEAR, VISIBLY, YOU CAN SEE THAT THERE IS A LINE APPROXIMATELY 72 PERCENT ON THE SMOKING BAR AT THE BOTTOM, VERY LIGHT, TO SEE BUT EACH OF THOSE BARS HAS A LINE SHOWING THE PROPORTIONS OF PERSONS WHO RECEIVE A RISK FROM ANY USE OR EXCESSIVE USE WHO BELIEVE THAT THERE IS A RISK FROM ANY USE AT ALL.

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

28 AND BY THE LATE 1990'S PEOPLE
3171
1 BELIEVED GENERALLY THAT THERE WAS SOME HEALTH RISK,
2 AT LEAST IN ANY USE OF CIGARETTE SMOKING. THIS
3 CONTRASTED WITH THE OTHER RISKS, AND IT CONTRASTS
4 WITH EARLIER SURVEY DATA SHOWING THAT THE PUBLIC
5 WAS QUITE RECEPTIVE TO THE NOTION THAT SMOKING WAS
6 DANGEROUS ONLY IF TO EXCESS.
7 Q. YOU SAID ABOUT NINE DIFFERENT
8 THINGS IN THERE.
9 A. YES, I WOULD AGREE WITH THAT.
10 Q. SEE THIS RIGHT HERE?
11 A. YES.
12 Q. IS THAT --
13 A. THAT'S THE LINE.
14 Q. HANG ON.
15 HANG ON. SLOW DOWN.
16 WHAT IS THIS SIDE ON THE LINE MEAN?
17 A. THOSE ARE THE --
18 Q. AND WHAT DOES THIS SIDE MEAN?
19 A. THE LEFT-HAND SIDE IS THE
20 PROPORTION OF THE POPULATION THAT BELIEVED THAT ANY
21 AMOUNT OF SMOKING WAS DANGEROUS TO YOUR HEALTH IN
22 1998 IN THIS SURVEY.
23 THE RIGHT-HAND SIDE IS THE
24 PROPORTION THAT'S ADDED IF YOU INCORPORATE THE
25 PROPORTION OF PEOPLE WHO BELIEVED THAT IT IS
26 DANGEROUS IF ENGAGED IN, QUOTE, TO EXCESS.
27 THERE ARE PARALLEL LINES FOR EACH
28 OF THE OTHER RISKS AND WITH THE EXCEPTION OF
3172
1 CIGARETTE SMOKING, IN EACH OF THE OTHER CASES, THE
2 RISK IS PERCEIVED AS THE PROPORTION OF PEOPLE WHO
3 PERCEIVE RISK IF IT IS ENGAGED IN TO EXCESS IS MUCH
4 GREATER THAN THE PROPORTION WHO BELIEVE THERE IS A
5 RISK IF IT IS ENGAGED AT ANY LEVEL AT ALL IN 1998.
6 THIS IS AT THE END OF THE TIMEFRAME.
7 Q. HOW MANY TIMES HAVE YOU TALKED TO
8 ME ABOUT THIS?
9 A. ABOUT THIS PARTICULAR CHART, I
10 BELIEVE, ONLY THIS MORNING.
11 Q. OKAY. BECAUSE I DIDN'T UNDERSTAND
12 YOUR ANSWER JUST NOW.
13 SLOW DOWN AND SAY IT DIFFERENTLY.
14 A. I SHALL ATTEMPT TO DO SO.
15 THE TOTAL LENGTH OF THE BAR IN EACH
16 CASE ADDS TOGETHER THOSE PERSONS WHO SAID THAT THE
17 BEHAVIOR IN QUESTION POSED A HEALTH RISK OF A
18 SUBSTANCE IN QUESTION, POSED A HEALTH RISK IF IT
19 WAS ENGAGED IN EITHER AT ALL OR, QUOTE, TO EXCESS.
20 THERE IS A SHADING IN THE BAR WHICH
21 DOESN'T REPRODUCE VERY WELL HERE THAT IS LABELED
22 "EXCESS," WHICH SHOWS THE PROPORTION OF PEOPLE TO
23 THE LEFT-HAND OF THAT LINE WHO BELIEVE THAT THE
24 BEHAVIOR POSED A HEALTH RISK IF IT IS ENGAGED IN AT
25 ALL.
26 THE EXTENSION OF THE BAR TO THE
27 RIGHT, THE INCREASE, REPRESENTS THE NUMBER OF
28 PEOPLE WHO ARE ADDED TO THE TOTAL PERCEIVING RISK,
3173
1 IF YOU ADD IN THE PEOPLE WHO SAY THAT IT IS
2 DANGEROUS IF ENGAGED IN ONLY TO EXCESS.
3 Q. EXCUSE ME.

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

4 I HEARD THAT ABOUT SMOKING?
5 A. YES.
6 Q. BUT THEN YOU SAID SOMETHING ABOUT
7 ALL THESE OTHER CATEGORIES IN HERE.
8 A. YES.
9 Q. I THINK YOU SAID WERE DIFFERENT
10 THAN SMOKING?
11 A. THAT IS CORRECT.
12 Q. WHY?
13 A. THEY ARE DIFFERENT FROM SMOKING IN
14 TERMS OF THE DISTINCTION BETWEEN THOSE WHO PERCEIVE
15 A RISK IF IT IS, IN FACT, IN, QUOTE, TO EXCESS.
16 AND THOSE WHO BELIEVE THERE IS A RISK IF IT IS
17 ENGAGED IN AT ALL.
18 SO FOR EXAMPLE, FEWER THAN TEN
19 PERCENT OF PEOPLE BELIEVE THAT DRINKING REGULAR
20 COFFEE MAY POSE SOME HEALTH RISK IF ENGAGED IN AT
21 ALL; WHEREAS, IF YOU INCLUDE THOSE PERSONS WHO SAY
22 THAT THERE IS A HEALTH RISK IF YOU ENGAGED IN IT TO
23 EXCESS, IF YOU DRINK COFFEE TO EXCESS, THEN YOU GET
24 UP TO SOME 70 PERCENT OF THE PEOPLE WHO SAY THAT
25 THERE IS A HEALTH RISK FROM DRINKING REGULAR
26 COFFEE.
27 IF YOU LOOK AT HIGH SALT FOODS,
28 ROUGHLY ONE IN FOUR SAY THAT THERE IS A RISK IF YOU
3174
1 EAT THEM TO EXCESS -- PARDON ME, AT ALL.
2 BUT IF YOU INCLUDE THOSE WHO SAY
3 THAT THERE IS A RISK IF YOU EAT THEM TO EXCESS AS
4 WELL AS THOSE WHO SAY THERE IS A RISK IF YOU
5 INDULGE IN IT AT ALL, YOU ARE THEN ABOVE 90
6 PERCENT.
7 YOU WILL NOTICE THAT THE BARS ARE
8 ROUGHLY THE SAME LENGTH FOR HIGH SALT FOODS, HIGH
9 FAT FOODS, ALCOHOL, BEING OVER WEIGHT AND SMOKING,
10 WITH SECONDHAND SMOKE, THAT'S THE ONE FROM THE
11 SECOND FROM THE BOTTOM, BEING A LITTLE BIT LOWER,
12 AND REGULAR COFFEE BEING LOWER YET.
13 HOWEVER, WITH THE EXCEPTION OF
14 SMOKING, IN EACH OF THOSE OTHER BARS, THE SIZE OF
15 THE GROUP RECEIVING A RISK, IF THE BEHAVIOR IS
16 ENGAGED IN, TO EXCESS, IS MUCH LARGER THAN THE
17 PROPORTION OF THE POPULATION WHO BELIEVE THAT THERE
18 IS A RISK FROM ENGAGING IN IT AT ALL.
19 Q. THANKS. NOW, TELL US AGAIN, THIS
20 SURVEY WAS DONE BY?
21 A. THE ROPER ORGANIZATION IN 1998.
22 Q. IS THIS ONE OF THE ONES THAT YOU
23 TOLD THE JURY YESTERDAY FELL IN THE PUBLIC CATEGORY
24 OR THIS IS PRIVATE?
25 A. THIS WAS A PUBLIC SURVEY.
26 Q. SO FOR A PUBLIC SURVEY, WHO PAYS
27 FOR IT?
28 A. PUBLIC SURVEYS ARE EITHER PAID FOR,
3175
1 TYPICALLY, BY A MEDIA CLIENT OR SOMETIMES THEY ARE
2 DONE AT THE BEHEST OF A SURVEY ORGANIZATION AND
3 RELEASED FOR ITS OWN PURPOSES.
4 BUT TYPICALLY FOR A PUBLIC CLIENT
5 OR CONSORTIUM OF CLIENTS, THIS PARTICULAR SURVEY, I
6 DON'T RECALL THE EXACT SPONSORSHIP OF IT, BUT IT
7 WAS DESIGNED TO BE RELEASED TO THE PUBLIC FROM THE
8 START AND WAS RELEASED TO THE PUBLIC AT THE TIME IT

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

9 WAS CONDUCTED.
10 Q. WHAT WAS THE PURPOSE OF THIS?
11 A. I AM SORRY?
12 Q. WHAT WAS THE PURPOSE OF THIS?
13 A. WELL, THE PUBLIC SURVEYS ASKED
14 QUESTIONS THAT THEY CONSIDER --
15 Q. NO. THIS ONE, WHAT WAS THE PURPOSE
16 OF THIS ONE?
17 A. OKAY.
18 MR. LEITER: FOUNDATION, PLEASE.
19 THE COURT: OVERRULED.
20 THE WITNESS: OKAY. THE PURPOSE OF THIS
21 PARTICULAR SURVEY BY THE ROPER ORGANIZATION WAS
22 TO -- WAS PART OF ITS MEASURING PUBLIC PERCEPTIONS
23 OF A VARIETY OF HEALTH-RELATED BEHAVIORS AND
24 INTENDED TO BE RELEASED TO THE PUBLIC AT THE TIME.
25 Q. BASED ON ALL THE STUFF YOU HAVE
26 GONE THROUGH, IF I SUGGESTED OVER THE COURSE OF
27 TIME IN THE UNITED STATES WE HAVE BECOME MORE
28 HEALTH CONSCIOUS, GENERALLY, LET'S FORGET
3176
1 CIGARETTES, TOTALLY, LET'S FORGET TOBACCO, TOTALLY,
2 IF I SUGGESTED, OVER THE COURSE OF THE LAST 50
3 YEARS WE HAVE BECOME MORE HEALTH CONSCIOUS,
4 GENERALLY, IS THAT SOMETHING ALL THESE SURVEYS BACK
5 UP?
6 A. THAT WOULD BE A CONSISTENT
7 INTERPRETATION, YES, THAT WOULD BE CONSISTENT WITH
8 THE OVERALL PATTERN OF THE DATA.
9 Q. ACCORDING TO THIS SURVEY HERE, HOW
10 MANY PEOPLE WERE IN THIS?
11 A. I BELIEVE APPROXIMATELY 1,500, BUT
12 I AM NOT CERTAIN OF THE EXACT NUMBER.
13 Q. IS THIS MEANT TO BE REPRESENTATIVE
14 OF EVERYONE IN THE COUNTRY?
15 A. YES. THE ADULT -- TECHNICALLY THE
16 ADULT NON-INSTITUTIONALIZED POPULATION.
17 Q. SO EVERYONE, IF THIS REPRESENTS
18 EVERYONE IN THE COUNTRY, THERE WAS A THOUGHT THAT
19 HIGH SALT FOODS, HIGH FAT FOODS, ALCOHOL, BEING
20 OVER WEIGHT AND SMOKING WERE ALL, ROUGHLY, ROUGHLY,
21 ABOUT AS BAD, HEALTH-WISE?
22 A. YES, IN TERMS OF IF YOU COMBINE THE
23 TWO CATEGORIES I MENTIONED, YES.
24 Q. OKAY. NOW, WHAT'S THE NEXT SURVEY
25 DOCUMENT YOU WANT ME TO SHOW, PLEASE. IS IT 23?
26 A. YES.
27 Q. THIS WILL BE 8002.504.
28 /// /// ///
3177
1 * (EXHIBIT 8002.504, POLL
2 DOCUMENT, MARKED FOR I.D.)
3
4 Q BY MR. PIUZE: BEFORE I PUT THIS
5 UP HERE, IN OUR LAST DISCUSSION, OR NEXT TO THE
6 LAST DISCUSSION, BUT WITHIN THE LAST TEN MINUTES,
7 YOU MENTIONED THE WORD "CONTROVERSY," DO YOU
8 REMEMBER THAT?
9 A. YES, I DID.
10 Q. HAS THERE BEEN A CONTROVERSY ABOUT
11 COFFEE?
12 A. I AM SORRY, I DIDN'T HEAR THE
13 QUESTION.

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Digitized by http://industrydocuments.ucsf.edu/docs/nnxl0001

Q. HAS THERE BEEN A CONTROVERSY ABOUT
COFFEE?
MR. LEITER: OBJECTION, FOUNDATION.
THE COURT: OVERRULED.
DO YOU KNOW?
MR. PIUZE: HANG ON.
I AM NOT SURE WHAT'S HAPPENING. IS
IT MY TURN?
THE COURT: THE COURT INTERPRETED THAT
QUESTION AS AN EFFORT TO SEEK A DEFINITION AND
THEREFORE ALLOWED THE QUESTION.
MR. PIUZE: I AM SORRY. IT'S MY TURN. I
APOLOGIZE.
Q BY MR. PIUZE: YOU ARE NOT IN
PUBLIC HEALTH, YOU ARE A POLLSTER, WHY DO YOU PUT
3178
OUT THE TERM "CONTROVERSY"?
A. CONTROVERSY REFLECTING TWO THINGS:
ONE IS MATTERS WHICH HAVE RECEIVED A FAIR AMOUNT OF
ATTENTION IN THE POPULAR PRESS AND ARE, ESPECIALLY
IF THEY ARE IN DISPUTE, SECONDLY, THE -- THIS
REPRESENTS THE COLLECTIVE JUDGMENT OF PEOPLE
ENGAGED IN THE POLLING ENTERPRISE AS TO WHETHER IT
IS WORTH ASKING QUESTIONS ABOUT.
ONE OF THE THINGS THAT PUTS
QUESTIONS ON THE AGENDA OF SURVEY RESEARCHERS IS
THEIR BELIEF THAT FINDING THE ANSWERS COULD BE
INTERESTING IN ITSELF, AND ONE OF THE -- AND/OR
THAT IT WOULD BE OF INTEREST TO PEOPLE WHO WOULD
READ THE SURVEYS.
AND ALL THINGS BEING EQUAL,
SOMETHING WHICH IS A MATTER OF CONTROVERSY, IS
UNDER DISCUSSION, IS GOING TO BE SOMETHING PEOPLE
ARE GOING TO BE MORE LIKELY TO ASK QUESTIONS ABOUT
THAN SOMETHING WHICH THEY DO NOT NECESSARILY
PERCEIVE AS BEING A CONTROVERSY.
Q. WELL, HAS THERE BEEN A CONTROVERSY
ABOUT REGULAR COFFEE?
A. YES.
Q. HAS THERE BEEN A CONTROVERSY ABOUT
HIGH SALT FOOD?
A. YES.
Q. HAS THERE BEEN A CONTROVERSY ABOUT
HIGH FAT FOODS?
3179
A. YES.
Q. ABOUT ALCOHOL?
A. YES, THERE HAS.
Q. OVER WEIGHT?
A. YES, THERE HAS.
Q. SMOKING, YOU HAVE ALREADY SAID
THAT?
A. YES.
Q. WHAT ABOUT SECONDHAND SMOKE?
A. YES, THERE HAS.
Q. ARE THESE POLLS TYPICALLY DONE
BECAUSE THERE IS A CONTROVERSY?
A. THERE EITHER IS OR HAS BEEN AT SOME
POINT BECAUSE ONE MIGHT ASK QUESTIONS FOR
COMPARATIVE PURPOSES AND TO MAINTAIN TRENDS FROM
THE PAST. THE FACT THAT ONE HAS ASKED QUESTIONS ON
A GIVEN TOPIC IN THE PAST MAY MEAN THAT ONE WANTS
TO FIND OUT WHETHER OR NOT OPINIONS AND BELIEFS ON

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

19 THAT TOPIC HAVE REMAINED STABLE OR CHANGED IN
20 EITHER DIRECTION. AND SO SOMETIMES TRENDS ARE
21 CONTINUED.
22 Q. THANK YOU.
23 HERE'S 8002. --
24 MR. LEITER: MAY I SEE THAT.
25 MR. PIUZE: I AM SORRY.
26 Q BY MR. PIUZE: .504, AND THIS IS
27 THE LAST ONE.
28 /// /// ///
3180
1 * (EXHIBIT 8002.504, POLL
2 DOCUMENT, MARKED FOR I.D.)
3
4 Q BY MR. PIUZE: SO YOU'RE A
5 POLLSTER, WHY DO YOU THINK THIS IS IMPORTANT?
6 A. THIS DEMONSTRATED THE
7 SELF-PERCEPTION OF SMOKERS AS A GROUP IN TWO
8 SURVEYS IN 1990 AND '99.
9 AGAIN, THESE ARE REPRESENTATIVE
10 QUESTIONS, SHOWING THE PROPORTION OF PRESENT
11 SMOKERS, PEOPLE WHO ARE CURRENTLY SMOKING WHO SAID
12 THEY WANTED TO QUIT WHO REPORTED THEY HAD SERIOUSLY
13 TRIED TO QUIT WHO FELT THAT THEY WERE ABLE TO QUIT.
14 BUT THE NEXT QUESTION, BUT WHO
15 FELT, PROPORTION, SAID THEY FELT ADDICTED.
16 AND THE LAST COLUMN IS THOSE WHO,
17 BASICALLY -- NOT BASICALLY, WHO SAID IF THEY HAD IT
18 TO DO ALL OVER AGAIN THEY WOULD NOT START TO SMOKE,
19 AND IT DEMONSTRATES THAT BY THE END OF THIS PERIOD
20 IN '99, THAT THE TYPICAL SMOKER DID, IN FACT,
21 MANIFEST, OR A SUBSTANTIAL PROPORTION OF THEM,
22 RATHER, DID MANIFEST A DESIRE TO QUIT, THAT A
23 SUBSTANTIAL PROPORTION OF THEM ALSO FELT THEY WERE
24 ADDICTED TO SMOKE. AND PERHAPS MOST TELLING IS
25 THAT LAST BAR, THE PROPORTION WHO SAID THEY
26 WOULDN'T START AGAIN IF THEY WERE BEGINNING ALL
27 OVER AGAIN.
28 Q. LET ME POINT SOMETHING OUT TO YOU
3181
1 HERE. IN THIS NINE-YEAR PERIOD, THIS IS ALMOST
2 EXACTLY THE SAME, ISN'T IT?
3 A. IT IS, INDEED. AND THAT IS TRUE OF
4 ALL BUT ONE.
5 Q. SO FROM 1990 TO 1999, THE
6 PROPORTION OF SMOKERS WHO WANT TO QUIT BASICALLY
7 HASN'T CHANGED?
8 A. CORRECT.
9 Q. AND FROM 1990 TO 1999, THE
10 PROPORTION OF SMOKERS WHO SERIOUSLY TRIED TO QUIT
11 IS HALF OF THEM, IS DEAD EVEN, RIGHT ON?
12 A. THAT IS CORRECT.
13 Q. AND FROM 19 -- WHAT DOES THIS MEAN,
14 PEOPLE WHO HAVE QUIT?
15 A. NO, THESE ARE PEOPLE WHO SAY THAT
16 THEY BELIEVE THEY WOULD BE ABLE TO QUIT IF THEY
17 TRIED.
18 Q. I SEE.
19 SO THAT'S BASICALLY ALMOST EXACTLY
20 THE SAME, OVER A NINE-YEAR PERIOD?
21 A. THAT IS CORRECT, SIR.
22 Q. DO YOU WANT TO JUMP THIS ONE FOR A
23 SECOND?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

24 A. YES.
25 Q. PEOPLE WHO WOULDN'T START IF THEY
26 HAD IT TO DO ALL OVER AGAIN, THAT'S BASICALLY THE
27 SAME?
28 A. YES. AND MOST OF -- A MODEST
3182
1 INCREASE BUT BASICALLY THE SAME.
2 Q. SO DO YOU ATTRIBUTE ANY
3 SIGNIFICANCE TO THIS, BECAUSE THIS IS THE ONLY ONE
4 THAT ISN'T THE SAME?
5 A. VERY DEFINITELY. THAT IN TERMS OF
6 APPLYING THE LABEL "ADDICTED" TO THEMSELVES, SAYING
7 THAT THEY FEEL ADDICTED TO CIGARETTES, THE
8 PROPORTION OF PRESENT SMOKERS WHO SAY THAT THAT
9 APPLIES TO THEM HAS INCREASED FROM SLIGHTLY OVER 60
10 PERCENT TO SOMEWHAT OVER 70 PERCENT IN THAT
11 NINE-YEAR TIME SPAN OF 1990 TO '99.
12 Q. WELL, WE CAN SEE THIS ONE INCREASED
13 BUT I AM SAYING, SO WHAT?
14 A. THIS HAS TO DO, WHAT IT DOES IS TO
15 SUGGEST IN TERMS OF SELF-PERCEPTION, THE THREE OUT
16 OF FOUR, ROUGHLY, SMOKERS WHO CURRENTLY BELIEVE UP
17 FROM SIX IN TEN THAT THEY ARE, THEMSELVES, ADDICTED
18 TO CIGARETTES.
19 Q. AND AGAIN, I SAY, SO WHAT?
20 A. WELL, IT WAS -- IF THAT -- SORRY.
21 THAT REPRESENTS ONE FACET OF THEIR SELF-PERCEPTION,
22 ONE FACET OF HOW EASY IT WOULD BE TO STOP SMOKING,
23 ONE FACET OF HOW THEY PERCEIVED THEIR PRESENT
24 SITUATION, VIS-A-VIS THE ORIGINAL DECISION TO START
25 SMOKING.
26 Q. BUT, WATCH. HANG ON. I AM NOT
27 CROSS-EXAMINING YOU HERE.
28 AS FAR AS HOW EASY IT WOULD BE TO
3183
1 QUIT, THERE'S HOW EASY IT WOULD BE TO QUIT RIGHT
2 THERE?
3 A. WELL, ABLE TO QUIT IS NOT THE SAME
4 AS EASY.
5 THIS IS THE PROPORTION OF PEOPLE
6 WHO ARE SAYING -- AFTER ALL THE PEOPLE WHO DID NOT
7 ANSWER THAT QUESTION IN THE AFFIRMATIVE ARE SAYING
8 THAT THEY WOULD NOT BE ABLE TO QUIT.
9 OR RATHER NOT SAYING THEY ARE ABLE
10 TO QUIT -- IT IS POSSIBLE, CERTAINLY AND LOGICALLY
11 POSSIBLE AND INDEED, MANIFESTLY, IF YOU LOOKED AT
12 INDIVIDUAL RELATIONSHIP OF THOSE TWO QUESTIONS,
13 THAT A NUMBER OF PERSONS WHO FEEL ADDICTED AND,
14 HENCE, BELIEVE THAT IT WOULD BE VERY, VERY HARD FOR
15 THEM TO QUIT, WOULD, NONETHELESS, BELIEVE THAT IT
16 WOULD NOT BE ABSOLUTELY IMPOSSIBLE FOR THEM TO
17 QUIT.
18 SO I THINK THOSE TWO QUESTIONS PUT
19 TOGETHER GIVE YOU A SENSE OF WHETHER PEOPLE FEEL
20 THERE'S ANY POSSIBILITY OF BEING ABLE TO QUIT AS
21 WELL AS A SENSE OF HOW DIFFICULT IT WOULD BE.
22 Q. WHO DID THIS?
23 A. I AM SORRY. THESE ARE GALLUP
24 SURVEYS.
25 Q. THIS IS A GALLUP SURVEY?
26 A. YES.
27 Q. WHY -- WHO PAID FOR THIS ONE?
28 A. THIS WAS PART OF THE ONGOING GALLUP

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

3184
1 POLL SERIES. SO THIS WOULD BE PAID FOR BY MEDIA
2 CLIENTS.
3 Q. DO YOU -- I KNOW YOU ARE NOT A
4 SMOKING SPECIALIST. BUT DO YOU HAVE, DO YOU HAVE
5 ANY IDEA HOW MANY PEOPLE SMOKE IN THE UNITED
6 STATES?
7 A. I DON'T HAVE THOSE FIGURES IN MY
8 HEAD. I KNOW THE PROPORTION HAS BEEN DROPPING
9 RATHER SUBSTANTIALLY.
10 Q. I DON'T WANT YOU GUESSING.
11 A. I CAN'T GUESS. I DON'T HAVE THE
12 NUMBER IN MY HEAD.
13 Q. FROM HERE, OF ALL THE PEOPLE IN THE
14 UNITED STATES THAT ARE SMOKING, FROM HERE TO THE
15 TOP, IS THAT LIKE 12, 13 PERCENT OF THE PEOPLE THAT
16 SAY THEY CAN'T QUIT?
17 A. YEAH, THAT WOULD BE -- NO, A LITTLE
18 MORE THAN 20.
19 Q. A LITTLE MORE THAN 20, SORRY.
20 TWO OUT OF TEN SMOKERS IN THE
21 UNITED STATES SAY THEY DON'T THINK THEY ARE GOING
22 TO BE ABLE TO QUIT SMOKING?
23 A. YES. OR MORE PRECISELY, THEY
24 DIDN'T SAY THEY WOULD BE ABLE TO QUIT.
25 Q. THIS COLUMN, THE FEEL ADDICTED
26 COLUMN, WHAT'S THE SIGNIFICANCE, WHAT DO YOU THINK
27 IS THE SIGNIFICANCE OF THAT?
28 A. I THINK THAT THE FEEL ADDICTED
3185
1 COLUMN IS INTERESTING IN TWO PARTS.
2 ONE IS THE WILLINGNESS TO APPLY TO
3 ONE THE LABEL "ADDICTED," WHICH IS NOT VERY
4 FAVORABLE LABEL IN SOME CIRCUMSTANCES. BUT IN ANY
5 EVENT A VERY -- IT'S A VERY INTERESTING FACET OF
6 THE SELF-PERCEPTION.
7 SECONDLY, I THINK IT PUTS THE
8 STATED ABILITY TO QUIT IN PERSPECTIVE. IT IS NOT
9 THE SAME AS IT'S EASY TO QUIT, MERELY THAT IT WOULD
10 BE AT LEAST THEORETICALLY POSSIBLE, JUST AS IT IS
11 THEORETICALLY POSSIBLE TO KICK VARIOUS ADDICTIONS.
12 NOT EASY.
13 Q. SO ADDICTION USED TO BE A BAD WORD
14 WITH BAD CONNOTATION. AND YET THERE IS A
15 TREMENDOUS AMOUNT OF PEOPLE PUT THAT LABEL ON
16 THEMSELVES?
17 A. THAT IS CORRECT.
18 Q. NOW, I GOT SOMETHING, NO MORE
19 SLIDES, BUT I HAVE SOME TOPIC AREAS I WOULD LIKE TO
20 DISCUSS WITH YOU, WRITTEN DOWN ON THIS YELLOW PIECE
21 OF PAPER.
22 TELL US, AGAIN, HOW MANY OF THESE
23 POLLS DO YOU THINK YOU REVIEWED. I AM NOT GOING TO
24 TALK ABOUT -- GIVE US AN IDEA HOW MANY YOU
25 REVIEWED.
26 HOW MANY OF THESE POLLS ON SMOKING
27 DO YOU THINK YOU REVIEWED THAT EXISTED OVER THE
28 COURSE OF THE LAST 50 YEARS SO THAT YOU CAN BE
3186
1 SITTING UP THERE TESTIFYING?
2 A. HUNDREDS AND HUNDREDS OF SURVEY
3 QUESTIONS.
4 Q. SO I JUST WANT TO STEP BACK FROM

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Generated by http://www.industrydocuments.ucsf.edu/docs/nnxl0001

5 THE INDIVIDUAL QUESTIONS AND THE INDIVIDUAL SURVEYS
6 AND GET A COUPLE OF GENERAL CONCEPTS. OKAY?
7 A. YES, SIR.
8 Q. THE FIRST ONE IS THIS: FIRST
9 QUESTION, "DID A RISK EXIST," SORT OF IN THE
10 ABSTRACT, "DID A RISK EXIST," WHAT'S HAPPENED TO
11 THAT QUESTION OVER THE COURSE OF 50 YEARS?
12 A. THERE HAS BEEN A SUBSTANTIAL
13 INCREASE IN THE PROPORTION OF PEOPLE THAT AGREE
14 THAT IN THE ABSTRACT THERE IS A RISK ATTACHED TO
15 HEALTH FROM CIGARETTE SMOKING.
16 Q. AND THE TERM "RISK" AS WE DISCUSSED
17 YESTERDAY, WOULD GO ALL THE WAY FROM HAVING A COUGH
18 TO HAVING --
19 A. YES.
20 Q. WAS THERE CLEAR EVIDENCE, OVER THE
21 COURSE OF TIME, THAT INDIVIDUAL SMOKERS THOUGHT
22 THESE RISK WOULD APPLY TO THEM?
23 A. THERE, THE SURVEY EVIDENCE SUGGESTS
24 THAT WHILE THERE WAS AN AWARENESS OF RISK IN THE
25 ABSTRACT WHICH TENDED TO BE LOWER AMONG SMOKERS
26 THAN AMONG NON-SMOKERS --
27 Q. STOP RIGHT THERE, PLEASE.
28 WHY DO YOU SAY THAT?
3187
1 A. BECAUSE IF YOU LOOK AT SURVEY DATA
2 IN WHICH PERSONS WERE BROKEN DOWN BY WHETHER THEY
3 SAID THEY WERE CURRENTLY SMOKERS OR NOT, AND LOOKED
4 AT THE ANSWERS TO SOME OF THE QUESTIONS, FOR
5 EXAMPLE, WHICH WE WERE LOOKING AT ON SLIDES
6 EARLIER, ONE TYPICALLY DISCOVERS IN THE EARLY YEARS
7 A ROUGHLY 20 POINT GAP BETWEEN SMOKERS AND
8 NON-SMOKERS IN THE PROPORTION BELIEVING THAT THERE
9 WAS A RISK FROM THE BEHAVIOR OR BELIEVING, FOR
10 EXAMPLE, THAT CIGARETTE SMOKING CAUSED LUNG CANCER.
11 SMOKERS WERE LESS LIKELY TO BELIEVE, TO ANSWER
12 THOSE QUESTIONS IN THE AFFIRMATIVE THAN WERE
13 NON-SMOKERS, AS A GROUP.
14 Q. SO PEOPLE SITTING AT A TABLE IN A
15 RESTAURANT -- IN WISCONSIN, CAN YOU SMOKE IN
16 RESTAURANTS?
17 A. SOME RESTAURANTS. IT DEPENDS ON
18 WHETHER ALCOHOL IS BEING SERVED AND THEY ARE
19 PREDOMINANTLY BARS.
20 Q. IN CONNECTICUT CAN YOU SMOKE IN
21 RESTAURANTS?
22 A. NO, YOU MAY NOT.
23 Q. WELL, I JUST WANT YOU TO ASSUME
24 THAT BACK HERE IN CALIFORNIA, YOU USED TO BE ABLE
25 TO SMOKE IN RESTAURANTS.
26 A. YES.
27 Q. SO IN THE EARLIER DAYS OF THIS
28 SURVEY, IF YOU HAD PEOPLE IN A RESTAURANT, YOU HAD
3188
1 A TABLE OF PEOPLE WHO ARE NOT SMOKERS, AND THEY
2 WERE SITTING NEXT TO A TABLE OF PEOPLE WHO WERE
3 SMOKERS. THE PEOPLE SITTING AT THE NO SMOKING
4 TABLE, MORE OF THEM, BY FAR, WOULD THINK SMOKING
5 WAS A POTENTIAL HEALTH HAZARD THAN THOSE PEOPLE WHO
6 WERE ACTUALLY SITTING AT THE TABLE SMOKING?
7 A. YES, THAT IS CORRECT.
8 Q. TELL ME WHAT THAT -- TELL US WHAT
9 THAT GAP IS.

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

A. IT TENDED TO BE APPROXIMATELY 20 POINTS IN THE EARLY PART OF THIS RANGE. IT DROPPED DOWN TO 10 POINTS BY THE TIME WE WERE TALKING ABOUT IN THE LATE 1980'S AND '90'S. AND IT IS VERY SMALL AT THIS MOMENT.
SMOKERS TYPICALLY DO NOT MATERIALLY DIFFER FROM NON-SMOKERS IN A VERY GREAT WAY ON THE ABSTRACT RISKS AT THE MOMENT.
Q. I WANT TO STOP FOR NOW, AT LEAST, ABOUT TEN YEARS BACK FROM THEN.
A. YES.
Q. SO AROUND 1990, LET'S SAY. WHAT WAS THE GAP IN 1990?
A. THEY WOULD TYPICALLY BE ON THE ORDER OF A 10 POINT GAP IN 1990.
Q. SO DID ANYONE, AND I DON'T MEAN YOU, BUT DID ANYONE EVER SIT DOWN AND SAY, HERE'S THE REASON WHY THAT IS?
A. THERE HAS BEEN SPECULATION ABOUT

3189

THAT. BUT WHAT I -- MY INTERPRETATION IS BASED UPON THE EXISTENCE OF THE DIFFERENCE, NOT GOING INTO DETAILS, THE WHY'S AND WHEREFOR'S OF IT.
Q. AS RECENTLY AS TEN YEARS AGO, SMOKERS, THERE WAS A NOTICEABLE GAP IN THE PERCEPTION OF RISK BETWEEN SMOKERS AND NON-SMOKERS?
A. YES.
Q. SO I INTERRUPTED AN ANSWER. AND I THINK THE QUESTION HAD TO DO WITH WHETHER INDIVIDUAL SMOKERS THOUGHT THE RISK WOULD APPLY TO THEMSELVES PERSONALLY.
A. YES.
THAT IS A VERY DIFFERENT QUESTION.
IT IS PERFECTLY POSSIBLE, LOGICALLY, TO BELIEVE THAT A RISK EXISTED WHILE BELIEVING THAT, FOR ONE OR OTHER REASONS, YOU, YOURSELF, ARE NOT GOING TO BE AFFECTED BY THAT RISK.
AND TO TAKE ONE PARTICULAR EXAMPLE, IN A 1995 SURVEY THAT WAS CONDUCTED AMONG SMOKERS AND NON-SMOKERS, WHERE NON-SMOKERS WERE ASKED TO, PARDON ME, SMOKERS WERE ASKED TO COMPARE THEIR RISK OF VARIOUS MEDICAL CONDITIONS TO THE RISK OF SOMEONE ELSE OF THE SAME AGE, AND GENERAL SITUATION, SMOKERS PERCEIVED A -- ONLY A MODEST PROPORTION OF SMOKERS PERCEIVED AN INCREASED RISK TO THEMSELVES; HENCE, THEY DID NOT MAKE, THAT'S ONE REPRESENTATIVE QUESTION OR A REPRESENTATIVE SURVEY

3190

SUGGESTING THEY DID NOT ESTABLISH THE LINK OF OR MANY DID NOT ESTABLISH A LINK WITHIN THE RISK IN THE ABSTRACT AND THE RISK APPLYING TO THEM.
Q. WHY?
A. WELL, THERE ARE SEVERAL REASONS.
IN GENERAL, ONE CAN THINK THAT A BEHAVIOR IS RISKY, BUT BELIEVE THAT ONE IS PROTECT FROM THAT RISK ONESELF BECAUSE IT MIGHT BE A QUESTION OF ONE'S SKILL OR ONE'S UNIQUE CHARACTERISTICS.
MR. LEITER: I AM GOING TO OBJECT TO THE FOUNDATION FOR THE ANSWER.
MR. PIUZE: YOU KNOW WHAT, YOUR HONOR, I AM GOING TO WITHDRAW THE QUESTION.

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

THE COURT: FAIR ENOUGH.
Q BY MR. PIUZE: IN YOUR LAST ANSWER
BEFORE THE WHY QUESTION, REMEMBER THAT ANSWER?
A. YES.
Q. HAS THE LITERATURE, THE PUBLIC
OPINION SURVEY AND THE LITERATURE DISCUSSED THE
REASON, SO THAT ISN'T THE WHY TO YOU, BUT HAS THERE
BEEN AN EXPLANATION IN THE PUBLIC POLLING
LITERATURE? IF THERE HASN'T, SO BE IT.
A. I WOULDN'T SAY THERE IS NOT A
COMMONLY ACCEPTED EXPLANATION FOR IT.
Q. SO IF WE GOT OUR TABLE OF SMOKERS
IN A RESTAURANT AND THEY ARE LESS LIKELY TO BELIEVE
THAT TOBACCO IS HARMFUL TO THEM THAN NON-SMOKERS,
3191
ARE YOU SAYING THAT EVEN THOUGH SMOKERS WHO THINK
THAT TOBACCO CAN BE HARMFUL BELIEVE THAT FOR SOME
REASON IT WON'T BE HARMFUL TO THEM PERSONALLY?
A. I AM SAYING THAT THE SURVEY DATA IS
CONSISTENT WITH THE IDEA THAT EVEN -- THAT MANY OF
THOSE -- EVEN MANY OF THOSE WHO PERCEIVE A RISK IN
THE ABSTRACT BELIEVE THE RISK WILL NOT APPLY TO
THEM PERSONALLY.
SO THAT THEY CAN ANSWER A SURVEY
QUESTION, BUT IS THERE A RISK IN THE AFFIRMATIVE
WITHOUT FEELING THAT THEY WERE AT RISK FROM THEIR
BEHAVIOR.
Q. NOW, DID THIS POLLING TAKE THAT
LAST ISSUE AND GO FURTHER WITH IT, MEANING, IS
THERE -- DO YOU BELIEVE THERE IS A GENETIC REASON,
DO YOU BELIEVE THERE IS A COSMIC REASON, DO YOU
BELIEVE A, B, C OR D, WHY IT DOESN'T APPLY TO YOU?
A. THERE HAS BEEN, OVER THE YEARS, A
NUMBER OF SURVEYS ASKING, TRYING TO PULL APART THE
RISK QUESTION A BIT. BUT WHAT THE ORIGINS OF IT
ARE PERCEIVED AS BEING -- THE PARTICULAR TREND I
WAS NOTING WAS BASED, HOWEVER, ON THE PERCEPTION OF
RISK, PER SE. AND THE PARTICULAR STUDY I WAS
MAKING REFERENCE TO WAS ONE THAT IS NOT, DID NOT
PULL APART THE REASONS. IT SIMPLY EXAMINED WHETHER
THERE WERE DIFFERENCES BETWEEN SMOKERS AND
NON-SMOKERS AND PERCEIVED SPECIFIC RISK.
Q. GOOD. NOW, HAS THIS POLLING EVER
3192
ADDRESSED THE ISSUE OF WHETHER EITHER SMOKERS OR
THE PUBLIC AS A WHOLE HAS BEEN RECEPTIVE TO THE
TOBACCO INDUSTRY'S SIDE OF THE, WHAT YOU CALL --
A. YES.
Q. SLOW DOWN.
A. YES.
Q. WHO HAS ASKED THOSE QUESTIONS?
A. VARIOUS ORGANIZATIONS ACROSS TIME,
IN BOTH PUBLIC AND PRIVATE POLLING, HAVE ASKED
QUESTIONS WHICH DEMONSTRATE TO MY PERCEPTION AND MY
EXPERTISE THAT THE PUBLIC, IN ESSENCE, WOULD BE
OPEN TO MANY OF THE ARGUMENTS WHICH HAVE BEEN MADE
HISTORICALLY IN THIS CONTROVERSY BY THE TOBACCO
INDUSTRY.
Q. SO LET'S TALK PUBLIC AND PRIVATE,
AGAIN, JUST FOR A SECOND.
PUBLIC STUFF IS ALL AVAILABLE TO
YOU BECAUSE IT IS PUBLIC; RIGHT?
A. YES.

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

Q. THE PRIVATE STUFF IS AVAILABLE TO
YOU HOW, WHY?
A. A LARGE PROPORTION OF THE PRIVATE
STUFF WAS AVAILABLE TO ME BECAUSE IT WAS SHOWN TO
ME IN THE COURSE OF AN EARLIER TOBACCO CASE IN
WHICH SOME DOCUMENTS WHICH ARE INTERNAL TOBACCO
COMPANY'S DOCUMENTS WERE PART OF THE DISCOVERY
PROCESS.
Q. OKAY, I REMEMBER THAT.
3193
SO LET'S TALK PUBLIC FIRST.
A. YES.
Q. LET'S NOT.
ARE THE RESULTS THE BOTH THE PUBLIC
AND THE PRIVATE SURVEYS ABOUT THE SAME?
A. IN GENERAL, THEY ARE CONSISTENT,
YES.
Q. CONSISTENT?
A. YES.
Q. SO TELL US.
A. WELL, FOR EXAMPLE, THERE HAVE, AT
VARIOUS POINTS IN TIME, BEEN SUSPICIONS ABOUT THE
ACCURACY OF MEDICAL TESTS HAVING TO DO WITH TRYING
TO EXTRAPOLATE CANCER RISK FROM VARIOUS SUBSTANCES.
TO TAKE ONE EXAMPLE, IN A 1979
SURVEY, THE PUBLIC WAS ASKED WHETHER OR NOT THEY
BELIEVED, AND THIS WAS A PUBLIC SURVEY, THE PUBLIC
WAS ASKED WHETHER OR NOT THEY BELIEVED THAT THE
QUANTITIES GIVEN TO LAB ANIMALS, CANCER WOULD BE
PRODUCED BY ALMOST ANYTHING. ROUGHLY TWO-THIRDS OF
THE PUBLIC SAID THEY DID.
PEOPLE WHO BELIEVED THAT MEDICAL
EXPERIMENTS COULD SHOW A LINK BUT NOT NECESSARILY
PROVE IT, AGAIN, PUBLIC ATTITUDE IS VERY CONSISTENT
WITH THAT.
IN ANOTHER CASE, AT VARIOUS TIMES
IN THIS TIMEFRAME, THE PUBLIC TENDED TO BUY INTO OR
AT LEAST BE OPEN TO THE POSSIBILITY THAT ONE OF THE
3194
REASONS FOR A STATISTICAL LINK, IF THERE WERE ONE,
BETWEEN CIGARETTE SMOKING AND CANCER, WOULD BE THAT
NOT SO MUCH THE SMOKING CAUSED CANCER BUT THAT
THERE WERE COMMON SET OF FACTORS.
THE CHARACTERISTICS THAT LED PEOPLE
TO SMOKE MIGHT ALSO BE CHARACTERISTICS THAT LED
THEM TO DEVELOP CANCER, AND HENCE, IF THAT WERE
TRUE, A PERSON WHO HAD THOSE CHARACTERISTICS WOULD
HAVE THE RISK OF DEVELOPING CANCER, EVEN IF THEY
DIDN'T SMOKE.
AND PUBLIC AND PRIVATE POLLING HAD
RESULTS THAT ARE CONSISTENT WITH THE PUBLIC BEING
WILLING TO AT LEAST ENTERTAIN AND BE OPEN TO THAT
ARGUMENT.
IT IS NOT TO SAY THEY ARE
CONVINCED, HOWEVER. IT IS SAYING THAT THEY WERE,
THE PATTERN OF OPINION CERTAINLY POKES HOLES, IF
YOU WILL, IN THE MOTION THAT THE PUBLIC WAS
ABSOLUTELY CONVINCED OF THE TRUTH OF ALL OF THE
CLAIMS AND THE STRENGTH OF THE RELATIONSHIPS.
Q. HOW MANY DIFFERENT THINGS DID YOU
JUST SAY? I HEARD ONE ABOUT EXPERIMENTS AND I
HEARD ONE ABOUT SORT OF PREDISPOSED TO HAVE IT.
WERE THOSE THE ONLY TWO?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

25 A. THOSE WERE THE TWO BASIC THEMES I
26 MENTIONED AS EXAMPLES OF THEMES WHICH WOULD BE
27 CONSISTENT WITH THE TOBACCO COMPANY'S ARGUMENTS.
28 Q. IN WISCONSIN DO PEOPLE TALK A LOT
3195
1 FASTER THAN OUT HERE IN CALIFORNIA?
2 A. ACTUALLY, I THINK THAT'S PROBABLY A
3 FACTOR OF GROWING UP IN CONNECTICUT PLUS MY OWN
4 FAMILY FACTORS.
5 Q. WELL, I DON'T WANT TO MESS WITH
6 YOUR GENETIC FACTORS, BUT PLEASE SLOW DOWN. PLEASE
7 SLOW DOWN.
8 A. ONCE AGAIN, I SHALL ENDEAVOR TO DO
9 SO. AND BELIEVE IT OR NOT, I AM TRYING. BUT I
10 WILL TRY HARDER.
11 Q. SO THAT ENDEAVOR TO DO SO IS STILL
12 A YES; RIGHT?
13 A. IT IS, INDEED.
14 Q. THIS IS LAID BACK, CALIFORNIA.
15 OKAY, LOOK, LET'S JUST DISCUSS --
16 A. I AM MERELY TRYING TO BE PRECISE.
17 I AM PROMISING TO TRY.
18 Q. THE SURVEYS THAT HAD TO DO WITH,
19 HEY, IF YOU, YOU KNOW, IF YOU PAINT RATS OR MICE OR
20 SOMETHING WITH TOBACCO AND THEY GET SICK, SO WHAT,
21 YOU COULD PAINT THEM WITH CHOCOLATE ICE CREAM AND
22 THE SAME THING MAY SORT OF HAPPEN. IS THAT WHAT
23 YOU ARE TALKING ABOUT?
24 A. ESSENTIALLY, YES. A SKEPTICISM
25 THAT MEDICAL -- THAT CAN BE EXTRAPOLATED TO HUMAN
26 BEINGS. AND IT WAS PART OF A GENERAL CULTURE, IF
27 YOU WILL, OF QUESTIONING WHETHER OR NOT ONE WILL
28 NECESSARILY BELIEVE VARIOUS REPORTS.
3196
1 Q. SO TELL US HERE, I GOT THE CONCEPT,
2 IT'S A WEIRD EXPERIMENT, WHAT DOES IT MEAN TO
3 PEOPLE, IT MIGHT NOT MEAN ANYTHING TO PEOPLE?
4 A. EXACTLY.
5 Q. WHEN DID PEOPLE REALLY QUESTION
6 THAT KIND OF STUFF? DO THEY STILL QUESTION IT NOW
7 AND HAS THAT ALSO CHANGED OVER A PERIOD OF TIME,
8 PLEASE.
9 A. YES. PEOPLE DO CONTINUE TO
10 QUESTION IT. PEOPLE WILL TEND TO BE SKEPTICAL, IN
11 PRINCIPLE, OF ALLEGATIONS, ESPECIALLY IF THEY DON'T
12 NECESSARILY MAKE SENSE TO THEM IN THE CONTEXT OF
13 THEIR OWN LIVES.
14 THE FACT THAT RESEARCH IS PUBLISHED
15 DOES NOT NECESSARILY MEAN AND CONTINUES NOT
16 NECESSARILY TO MEAN THAT THE PUBLIC WILL BUY INTO
17 IT. THIS IS ALSO RELATED TO A BROADER THEME THAT
18 THE PUBLIC DOES NOT NECESSARILY BELIEVE EVERYTHING
19 THE GOVERNMENT SAYS.
20 THE GOVERNMENT IS AN INFORMATION
21 SOURCE BUT IS NOT REGARDED, ITSELF, NECESSARILY AS
22 A TOTALLY TRUSTWORTHY INFORMATION SOURCE. AND THE
23 FACT THAT THE SURGEON GENERAL SAYS SOMETHING
24 DOESN'T NECESSARILY MEAN THAT PEOPLE WILL BELIEVE
25 IT BECAUSE THE SURGEON GENERAL SAYS IT.
26 Q. ALL RIGHT. STOP THERE FOR A
27 SECOND, BECAUSE THAT'S A POINT I WANT TO EXPLORE.
28 YOUR PUBLIC POLLING, I GUESS THIS
3197

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

1 IS, MAY OR MAY NOT BE A NEWS FLASH, BUT YOUR PUBLIC
2 POLLING, OVER THE YEARS, HAS SHOWN THAT PEOPLE
3 DON'T NECESSARILY TRUST WHAT THE GOVERNMENT SAYS?
4 A. THAT IS CORRECT.
5 Q. AND WHAT'S BEEN HAPPENING WITH
6 THAT, OVER THE COURSE OF -- I AM NOT TALKING ABOUT
7 TOBACCO.
8 A. NO, IN GENERAL.
9 Q. IN GENERAL, OVER 50 YEARS, ARE
10 PEOPLE MORE OR LESS TRUSTFUL OF WHAT THE GOVERNMENT
11 SAYS TO THEM?
12 A. IT MOVES UP OR DOWN. IN
13 PARTICULAR, IT TENDED TO MOVE DOWN IN THE 1960'S
14 AND '70'S OF THE TIME OF THE VIETNAM WAR, WHICH,
15 COINCIDENTALLY, WAS THE SAME TIME AS THE WARNING
16 LABELS BEGAN TO APPEAR AND THE GOVERNMENT BEGAN
17 VERY EXPLICITLY TO COMBAT CIGARETTE SMOKING IN A
18 VARIETY OF WAYS. SO THAT IF YOU WILL, THE SAME
19 GOVERNMENT THAT WAS SAYING CIGARETTES ARE DANGEROUS
20 TO YOUR HEALTH WAS THE GOVERNMENT THAT WAS SAYING
21 WE NEED TO BE IN VIETNAM. AND PEOPLE WEREN'T
22 NECESSARILY CONVINCED OF THAT.
23 IT REACHED A VERY -- IT WENT UP IN
24 THE 1970'S AROUND THE TIME OF RICHARD NIXON'S
25 RESIGNATION WHEN THERE WAS VERY LOW TRUST IN
26 GOVERNMENT. IT HAS MOVED AROUND, BUT THE
27 GOVERNMENT HAS NEVER QUITE LOST HAD SKEPTICISM
28 ABOUT GOVERNMENTAL STATEMENTS THAT BEGAN FIRST TO
3198
1 BE MANIFEST IN A VERY CLEAR WAY IN THE 1960'S AND
2 ESPECIALLY AROUND THE VIETNAM ERA AND VARIOUS OTHER
3 VERY CENTRAL POLITICAL CONTROVERSY.
4 Q. SO NOW LET'S SEE IF I CAN FOCUS
5 THAT DOWN.
6 HAS ANY OF THIS POLLING SAID TO
7 PEOPLE, NOT JUST YOU BELIEVE WHAT GOVERNMENT SAYS,
8 BUT DO YOU BELIEVE WHAT GOVERNMENT SAYS ABOUT
9 HEALTH ISSUES, HAS IT EVER GOTTEN THAT SPECIFIC?
10 A. I AM NOT IMMEDIATELY AWARE OF
11 SPECIFIC QUESTIONS ABOUT COMPARING GOVERNMENT
12 HEALTH CLAIMS TO OTHER STATEMENTS MADE BY THE
13 GOVERNMENT. I AM TALKING MORE PERCEPTIONS IN
14 GOVERNMENT AS A SPOKESPERSON, IF YOU WILL, OF THE
15 GOVERNMENT, AS A SOURCE OF FACTS IN GENERAL.
16 AND CERTAINLY THERE HAVE, HOWEVER,
17 BEEN QUESTIONS ABOUT BELIEVABILITY OF HEALTH CLAIMS
18 BUT NOT NECESSARILY BELIEVING GOVERNMENT TO OTHER
19 SOURCES.
20 Q. SO I THINK THE NEXT AND LAST THING
21 YOU WERE TALKING ABOUT, I WANT TO USE THE WORD
22 "GENETIC," BUT IT IS NOT A WORD YOU USED, BUT YOU
23 WERE DISCUSSING A CONCEPT OF WHATEVER CAUSES
24 SOMEONE TO GET SICK, CAUSES SOMEONE TO SMOKE,
25 WHATEVER -- SAY THAT AGAIN.
26 A. RIGHT. SOMETIMES WE CALL IT THE
27 CONSTITUTIONAL ARGUMENT. THE IDEA THAT THE, THAT
28 IF A PERSON WHO ENGAGES IN BEHAVIOR "A" HAS A
3199
1 HIGHER RISK OF CONSEQUENCE "B," IS THAT BECAUSE HE
2 OR SHE ENGAGED IN BEHAVIOR "A" OR IS THERE A COMMON
3 CAUSE, IS THERE SOMETHING THAT MAKES PEOPLE, AS A
4 GROUP, MORE LIKELY TO ENGAGE IN BEHAVIOR "A" AND
5 ALSO SEPARATELY MAKES THEM MORE LIKELY TO HAVE

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

6 CONSEQUENCE "B." THAT WOULD PRODUCE WHAT'S
7 TECHNICALLY CALLED A SPURIOUS CORRELATION.
8 Q. PLEASE SLOW DOWN. LET'S GET RID OF
9 "A" AND "B" AND TALK ABOUT CIGARETTES.
10 A. OKAY. IF YOU ARE TALKING
11 SPECIFICALLY ABOUT CIGARETTES, THE ARGUMENT WOULD
12 BE OR A QUESTION WOULD BE, IF THERE IS A HIGHER
13 RISK AMONG CIGARETTE SMOKERS OF VARIOUS HEALTH
14 CONSEQUENCES, IS THAT BECAUSE THEY SMOKE, I.E., THE
15 ACT OF SMOKING CAUSED THE RISK OR BECAUSE OF THE
16 KIND OF PEOPLE THEY WERE, THE KIND OF BACKGROUND
17 THEY HAVE, THE KIND OF LIFESTYLE THEY LED.
18 IF IT WERE THE LATTER AND THOSE
19 QUESTIONS HAVE BEEN ASKED, IF IT WERE THE LATTER,
20 THEN A PERSON WHO IS SMOKING MIGHT VERY WELL SAY,
21 IT WON'T MAKE ANY DIFFERENCE IF I STOP, BECAUSE I
22 AM THE KIND OF PERSON WHO TENDED TO SMOKE IN THE
23 FIRST PLACE. AND ONLY IF IT IS SMOKING THAT CAUSES
24 THE PROBLEM AS OPPOSED TO THE KIND OF PERSON I AM,
25 WOULD BEGINNING TO SMOKE OR CEASING TO SMOKE HAVE
26 AN EFFECT ON AN INDIVIDUAL PERSON.
27 Q. I GOT FOUR MORE AREAS, I THINK.
28 FIRST OF ALL, IN 1960, I BELIEVE,
3200
1 THERE WAS A SENIOR SCHOLASTIC MAGAZINE TEAM SURVEY
2 THAT HAD SOMETHING TO DO WITH SMOKING. ARE YOU
3 FAMILIAR WITH IT?
4 A. YES, I AM.
5 Q. HOW ARE YOU FAMILIAR WITH IT?
6 A. I AM FAMILIAR WITH IT BECAUSE IT
7 HAS BEEN USED AS AN EXAMPLE OF AN INTERPRETATION OF
8 SURVEY DATA THAT WILL NOT BEAR THE WEIGHT OF
9 SCIENTIFIC OR CRITICISM. AND ALSO I AM AWARE THAT
10 IT HAS OFTENTIMES BEEN CITED IN CONTROVERSIES ABOUT
11 WHAT THE PUBLIC DID OR DID NOT BELIEF ABOUT SMOKING
12 AT VARIOUS TIMES.
13 Q. SO WHAT WAS IT?
14 A. THIS WAS A SURVEY THAT WAS DONE OR
15 IT WAS DONE FOR SENIOR SCHOLASTIC MAGAZINE AND A
16 NUMBER OF SCHOOLS IN THE COUNTRY SENT BACK
17 QUESTIONNAIRES THAT WERE FILLED OUT IN CLASS, THE
18 SCHOOLS WERE SELF-DESIGNATING, THE TEACHERS WERE
19 SELF-DESIGNATING, THERE WERE SOME 11,000 RESPONSES
20 TO THIS ENDEAVOR.
21 Q. STOP, PLEASE.
22 WHAT IS SELF-DESIGNATING?
23 A. IT MEANS THAT INSTEAD OF NORMAL
24 PROCEDURES FOR A SURVEY, INDIVIDUALS WERE RANDOMLY
25 CHOSEN AND ONE CHOSE TO SOLICIT THEIR COOPERATION.
26 ULTIMATELY THE PEOPLE WHO WERE PART OF THIS CAME
27 INTO THE COLLECTION OF DATA BECAUSE THEIR SCHOOLS
28 VOLUNTEERED TO BE IN IT, BECAUSE THEIR CLASSROOMS
3201
1 TEACHERS VOLUNTEERED TO BE IN IT AND COLLATED THE
2 DATA AND SENT IT IN. THEY, THEREFORE, ARE NOT A
3 STATISTICAL SAMPLE OF HIGH SCHOOL STUDENTS.
4 Q. I INTERRUPTED YOU, GO AHEAD.
5 A. AND THEY ASKED A QUESTION ASKING
6 PEOPLE TO DESCRIBE THEMSELVES IN TERMS OF SEVERAL
7 DIFFERENT STATEMENTS CHARACTERIZING THEIR ATTITUDE,
8 THEIR BELIEF ABOUT CANCER AND CIGARETTE SMOKING.
9 AND THE RESULTS OF THIS WERE WIDELY
10 REPORTED TO SUGGEST THAT VIRTUALLY ALL TEENAGERS

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

PERCEIVED A LINK. HOWEVER, LOOKING AT THE ACTUAL QUESTION WHICH WAS ASKED AS A PROFESSIONAL SURVEY RESEARCHER, I DOUBT THAT LINK VERY STRONGLY, EVEN IF I WEREN'T ALSO CRITICAL OF IT FROM THE STANDPOINT THAT IT ONLY REPRESENTS TO PERSONS THAT FILLED OUT THE SURVEY, NOT THE POPULATION FROM WHICH THEY WERE DRAWN.
Q. AND WHY, WHY AS A PROFESSIONAL RESEARCHER, WOULD YOU DOUBT THE RESULT HERE?
A. WELL, THE QUESTION WAS WHAT DO YOU THINK ABOUT CANCER IN CIGARETTE SMOKING.
AND THERE WERE FOUR BASIC CATEGORIES. QUOTE, "I THINK BOTH LIGHT SMOKERS AND HEAVY SMOKERS RUN A GREATER RISK OF GETTING LUNG CANCER THAN NON-SMOKERS."
SECOND, "I THINK ONLY A HEAVY SMOKER, ONE WHO SMOKES TWO OR MORE PACKS A DAY, RUNS A GREATER RISK OF GETTING LUNG CANCER THAN A
3202
NON-SMOKER."
THREE, "I THINK SMOKING MAY HAVE SOME CONNECTION WITH LUNG CANCER BUT THERE IS NO CONCLUSIVE EVIDENCE WHICH LINKS THE TWO.
FOUR, "SMOKING HAS NO CONNECTION WITH LUNG CANCER."
NOW, THE LAST RESPONSE, AFFIRMATIVELY, SMOKING HAS NO CONNECTION WITH LUNG CANCER, ACCOUNTED FOR ONLY 2.6 PERCENT OF THE RESPONSES, 3 PERCENT ROUNDED.
THIS WAS PUBLICIZED TO SAY THAT 97 PERCENT OF HIGH SCHOOL STUDENTS BELIEVE THAT CIGARETTE SMOKING CAUSED LUNG CANCER.
I WOULD SUBMIT THAT IN THE FIRST PLACE, THOSE OTHER THREE CATEGORIES SHOULD NOT BE LUMPED INTO CIGARETTE SMOKING CAUSES LUNG CANCER.
AND IN PARTICULAR, LOOKING AT THAT THIRD ONE I MENTIONED, "I THINK SMOKING MAY HAVE SOME CONNECTION WITH LUNG CANCER, BUT THERE IS NO CONCLUSIVE EVIDENCE WHICH LINKS THE TWO," IS MORE OR LESS A POSITION TAKEN BY THE TOBACCO INDUSTRY FOR A LONG PERIOD OF TIME THAT WHATEVER EVIDENCE THERE WAS WASN'T CONCLUSIVE.
AND THAT ACCOUNTED FOR ITSELF BY 32.2 PERCENT OF THE HIGH SCHOOL SENIORS, ROUGHLY 20 PERCENT SAID THAT ONLY HEAVY SMOKERS MIGHT HAVE AN INCREASED RISK. AND SOME 45 PERCENT BELIEVED THAT SMOKING, BOTH LIGHT AND HEAVY SMOKERS, RUN A
3203
GREATER RISK OF GETTING LUNG CANCER THAN NON-SMOKERS, EVEN IF THIS WERE REPRESENTATIVE, WHICH I SAY IT IS NOT, IT SIMPLY ISN'T THE CASE THAT THAT CAN MEANINGFULLY BE TRANSLATED TO SAY 97 PERCENT BELIEVE IN A LINK.
Q. AS PART OF YOUR INTRODUCTORY COMMENTS HERE, ARE YOU SAYING THAT THIS SURVEY HAS BEEN USED BY THE TOBACCO INDUSTRY IN LITIGATION SUCH AS THIS?
MR. LEITER: OBJECTION, RELEVANCE.
THE COURT: SUSTAINED.
Q BY MR. PIUZE: HAS THE GALLUP ORGANIZATION ITSELF GONE ON RECORD AS CRITICIZING THE USE OF SOME OF ITS POLLING DATA IN ORDER TO SUPPOSEDLY SHOW THAT EVERYONE KNEW TOBACCO WAS

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

16 DANGEROUS?
17 MR. LEITER: OBJECTION, RELEVANCE, WE MAY
18 NEED TO APPROACH.
19 THE COURT: NOT AT THIS POINT.
20 YES OR NO?
21 THE WITNESS: I AM SORRY. THE GALLUP
22 ORGANIZATION HAS SAID THAT THIS DATA HAS NOT BEEN
23 PROPERLY USED, YES.
24 Q BY MR. PIUZE: NOW, WHO IS THE
25 SECOND PERSON -- WHO IS THE SECOND PERSON IN
26 COMMAND OVER AT GALLUP?
27 A. THE PERSON SECOND IN COMMAND OF THE
28 GALLUP POLL IS NAMED LYDIA SODD, WHO WAS A GRADUATE
3204
1 OF THE UNIVERSITY OF CONNECTICUT AND WAS ONE OF MY
2 FORMER STUDENTS.
3 Q. SO ONE OF YOUR FORMER STUDENTS IS
4 THE SECOND IN COMMAND AT THE GALLUP POLL?
5 A. YES.
6 Q. AND HAS SHE GONE ON RECORD AS
7 SAYING THAT THE TOBACCO INDUSTRY HAS MISUSED THE
8 GALLUP POLLING DATA, PLEASE.
9 MR. LEITER: OBJECTION, RELEVANCE, WE MAY
10 NEED TO APPROACH.
11 THE COURT: I CAN SEE RELEVANCE. I DON'T
12 NEED ARGUMENT ON IT.
13 PROCEED. OVERRULED.
14 THE WITNESS: YES, SHE HAS.
15 Q BY MR. PIUZE: WHAT?
16 A. IN A PAPER PUBLISHED, PRESENTED,
17 RATHER, AT THE AMERICAN ASSOCIATION FOR PUBLIC
18 OPINION RESEARCH MEETINGS IN MAY 1998 IN
19 SAINT LOUIS, SHE AND A COLLEAGUE OF HERS FROM THE
20 GALLUP ORGANIZATION, STEVE O'BRIEN, PRESENTED A
21 PAPER CALLED "THE TOBACCO INDUSTRY SUMMONS POLLS TO
22 THE WITNESS STAND," SUBTITLED, "A REVIEW OF PUBLIC
23 OPINION ON THE RISK OF SMOKING."
24 MR. LEITER: YOUR HONOR, I WANT TO RENEW
25 MY OBJECTION.
26 THE COURT: IS THIS IN CONNECTION WITH
27 LITIGATION ONLY OR IS IT PUBLIC USE OF THE
28 INFORMATION? ESTABLISH A FOUNDATION.
3205
1 THE COURT WOULD HAVE A PROBLEM IF
2 THIS IS LITIGATION USE ONLY.
3 MR. PIUZE: I AM SORRY, YOUR HONOR.
4 Q BY MR. PIUZE: THAT'S THE
5 QUESTION, WAS SHE CRITICIZING THE TOBACCO
6 INDUSTRY'S USE -- NOT SHE, BUT THE TWO OF THEM,
7 CRITICIZING THE TOBACCO INDUSTRY'S USE OF THEIR
8 DATA, GENERALLY, OR WAS SHE CRITICIZING THE TOBACCO
9 INDUSTRY'S USE OF THEIR DATA IN SITUATIONS LIKE
10 THIS?
11 A. I THINK THE FAIREST ANSWER IS BOTH.
12 Q. OKAY. BUT DON'T SAY ANYTHING ELSE.
13 THE COURT: THAT WILL BE FINE.
14 OVERRULED.
15 MR. PIUZE: THANK YOU.
16 Q BY MR. PIUZE: GO AHEAD.
17 A. IN THIS PAPER, THEY SUMMARIZE THE
18 NUMBER OF RESULTS OF GALLUP POLLS OVER THE YEARS
19 AND POINTED OUT WHY THEY BELIEVED THAT THE PATTERN
20 OF DATA WAS NOT REFLECTIVE OF A CONCLUSION THAT THE

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

21 RISKS OF CIGARETTE SMOKING WERE WIDELY UNDERSTOOD
22 AND WIDELY ACCEPTED, GOING BACK AS EARLY AS THE
23 1950'S.
24 BUT THAT, INSTEAD, THEY TENDED TO
25 BE CONSISTENT WITH THE NOTION OF A GROWING
26 AWARENESS OF PERCEPTIONS OF RISK, AND IN
27 PARTICULAR, CRITICIZED SOME OF THE SPECIFIC
28 QUESTIONS AND INTERPRETATION OF THEM WHICH I
3206
1 REFERRED TO EARLIER IN MY OWN TESTIMONY YESTERDAY,
2 ESPECIALLY THOSE QUESTIONS IN THE 1950'S. IN THE
3 COURSE OF THIS, THEY ALSO PULLED TOGETHER A LOT OF
4 GALLUP DATA OVER THE YEARS SHOWING VARIOUS TRENDS,
5 OF WHICH WAS, IN FACT, ALL OF WHICH WAS ALSO
6 AVAILABLE FOR OTHER SOURCES THAT WAS PUT TOGETHER
7 IN A SINGLE DOCUMENT FOR EASE OF ACCESS.
8 Q. NOW, FROM A POLLING PERSPECTIVE,
9 NOT MEDICAL, NOT SCIENTIFIC, NOT CHEMIST, BUT FROM
10 A POLLING PERSPECTIVE, IS THE GALLUP REPORT THAT
11 YOU ARE REFERRING TO A RELIABLE SOURCE?
12 A. YES.
13 Q. A RESPECTED SOURCE?
14 A. YES.
15 Q. DO YOU HAVE A COPY OF IT?
16 A. YES, I DO.
17 Q. JUST CONFIRM THAT'S THE DOCUMENT.
18 MR. LEITER: MAY I SEE IT, PLEASE.
19 THE WITNESS: IT IS, INDEED.
20 MR. PIUZE: SURE.
21 MR. LEITER: THANK YOU.
22 Q BY MR. PIUZE: JUST FOR
23 IDENTIFICATION ONLY, HOW ABOUT COURT EXHIBIT
24 10,002, IS THAT ACCEPTABLE?
25 THE CLERK: 1000.2.
26 MR. PIUZE: 10,002.
27 /// /// ///
28 /// /// ///
3207
1 * (EXHIBIT 10,002, GALLUP
2 DOCUMENT, MARKED FOR I.D.)
3
4 Q BY MR. PIUZE: ALL RIGHT. HERE'S
5 MY LAST AREA. OFF AND ON WE HAVE TALKED ABOUT
6 PRIVATE POLES; RIGHT?
7 A. YES, SIR.
8 Q. I WANT TO SHOW YOU A DOCUMENT OR
9 DISPLAY A DOCUMENT THAT I HAVE SHOWN YOU BEFORE.
10 THIS IS PHILIP MORRIS FROM OSDENE TO SELIGMAN, AND
11 THIS IS FEBRUARY 16, 1978.
12 THIS IS EXHIBIT 136.00.
13 AND THIS DISCUSSES A ROPER STUDY
14 PROPOSAL TO THE TOBACCO INSTITUTE.
15 NOW, WHEN, FROM WHAT YOU CAN
16 DETERMINE, FROM REVIEWING ALL THIS STUFF, WHEN DID
17 THE TOBACCO INDUSTRY INSTITUTE OR ONE OF ITS
18 SISTER/BROTHER ORGANIZATIONS FIRST GO TO ROPER?
19 A. I BELIEVE THE FIRST ROPER SURVEY
20 WAS DONE IN 1959, I BELIEVE.
21 Q. DO THEY CONTINUE TO THIS DAY?
22 A. NOT TO MY KNOWLEDGE.
23 Q. WHAT'S THE LATEST ONE OF WHICH YOU
24 ARE AWARE?
25 A. THE LAST ONE OF WHICH I AM AWARE

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/nnxl0001

26 WAS 1982.
27 Q. SO THAT'S A PERIOD OF ABOUT HOW
28 LONG?
3208
1 A. THAT WOULD BE 23 YEARS.
2 Q. CAN YOU GIVE US AN IDEA OF HOW MANY
3 TIMES, AT THE REQUEST OF THE TOBACCO INDUSTRY,
4 WHETHER IT IS AN INDIVIDUAL COMPANY OR ONE OF THE
5 RECOVERY ORGANIZATIONS THAT ROPER WENT OUT AND DID
6 POLLING REGARDING TOBACCO ISSUES?
7 A. I AM PERSONALLY AWARE OF THE 1959
8 SURVEY. THERE WAS ONE DONE IN 1968 OF THE GENERAL
9 POPULATION AND ALSO OF TEENAGERS. THERE WERE --
10 THEY WERE ROUGHLY DONE AT TWO-YEAR INTERVALS UP
11 THROUGH 1982, THAT I HAVE SEEN, EXAMINING VARIOUS
12 ASPECTS OF TOBACCO USE, SOME OF WHICH WAS RELATED
13 TO BRAND USE AND THE LIKE.
14 I AM NOT SURE WHICH HAD TO DO WITH
15 GENERAL PERCEPTIONS OF TOBACCO AND RISK AND WHAT
16 HAVE YOU. AND THESE ARE DOCUMENTS OF WHICH I HAVE
17 SEEN. THERE MIGHT BE OTHERS THAT I AM NOT AWARE
18 OF, BUT I HAVE SEEN SPECIFIC REFERENCE TO THOSE
19 SURVEYS.
20 Q. HAVE YOU, YOU HAVE SEEN THE SURVEYS
21 THEMSELVES, HAVE YOU COME ACROSS DOCUMENTS SUCH AS
22 THIS, IN THE STOREHOUSE OR WAREHOUSE OR LIBRARY,
23 WHATEVER IT IS CALLED, AT THE UNIVERSITY OF
24 CONNECTICUT, WHERE THE INDUSTRY RESPONDS TO SOME OF
25 THE SURVEY?
26 A. THIS PARTICULAR DOCUMENT I HAD
27 SEEN, BUT WAS NOT FROM THE ROPER CENTER COLLECTION.
28 IT WAS GIVEN TO ME AS ONE OF THE DOCUMENTS I
3209
1 REFERRED TO EARLIER IN THE EARLIER CASE THAT HAD
2 BEEN PART OF THE DISCOVERY PROCESS.
3 I HAVE SEEN THIS DOCUMENT AND I
4 HAVE SEEN AND READ ALL THE REPORTS OF THE VARIOUS
5 SURVEYS I REFERRED TO.
6 Q. I WASN'T TALKING ABOUT THIS
7 DOCUMENT YET, JUST AS THE GENERALITY. I AM GOING
8 TO INTERRUPT FOR A SECOND.
9 AT THE UNIVERSITY OF CONNECTICUT
10 WHERE THE ROPER, WHERE ROPER DONATED WHATEVER HE
11 DONATED -- WHAT'S THAT CALLED AGAIN?
12 A. THE ROPER CENTER FOR PUBLIC OPINION
13 RESEARCH.
14 Q. THE ROPER CENTER FOR PUBLIC OPINION
15 RESEARCH. IS THERE SOME KIND OF A LIBRARY THERE?
16 A. YES.
17 Q. AND THAT'S WHERE YOU FIND A LOT OF
18 THESE POLLS?
19 A. NOT THE PRIVATE ONES, THE PUBLIC
20 ONES, INCLUDING SOME LATER ROPER PUBLIC SURVEYS.
21 BUT THE PRIVATE ONES ARE NOT ARCHIVED THERE BECAUSE
22 THEY WERE CONSIDERED PROPRIETARY INFORMATION.
23 Q. SO WHENEVER YOU HAVE SEEN PRIVATE
24 POLES, HAVE YOU ONLY SEEN THAT BECAUSE YOU HAVE
25 GOTTEN IT FROM ATTORNEYS INVOLVED IN TOBACCO
26 LITIGATION?
27 A. YES.
28 Q. HAVE YOU EVER, AT THE ROPER
3210
1 INSTITUTE, AT THE UNIVERSITY OF CONNECTICUT, HAVE

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

YOU EVER SEEN INSIDE DOCUMENTS LIKE THIS?
I KNOW THIS ONE CAME FROM ATTORNEYS
IN TOBACCO LITIGATION. BUT HAVE YOU SEEN OTHERS
LIKE THIS, AT THE ROPER COLLECTION AT THE
UNIVERSITY OF CONNECTICUT?
A. I HAVE SEEN SOME BACKGROUND MEMOS
AND OTHER SURVEYS. I DO NOT RECALL HAVING SEEN
ANYTHING RELATED TO A SURVEY CONDUCTED FOR THE
TOBACCO INDUSTRY OR ANY OF ITS COMPONENTS, FROM THE
PUBLIC DATA.
Q. ARE YOU IN A POSITION TO SAY HOW
MUCH OF THE PRIVATE POLLING OF WHICH YOU ARE AWARE,
HAS BEEN MADE PUBLIC?
A. EXCEPT AS PART OF THE LITIGATION
PROCESS, TO MY KNOWLEDGE, NONE OF IT. I DON'T KNOW
ABOUT THAT.
Q. TO YOUR KNOWLEDGE, WITHOUT SWEARING
ON A STACK OF BIBLES FOR A HUNDRED PERCENT, TO YOUR
KNOWLEDGE, NOTHING?
A. CORRECT.
Q. WHEN YOU ARE TALKING ABOUT THOSE
PUBLIC POLLS BEING PAID FOR BY MEDIA, WHAT DOES
THAT MEAN, "MEDIA"?
A. THAT THERE, OFTENTIMES, WOULD BE A
CONSORTIUM OF MEDIA WHICH PAY THE EXPENSES OF A
POLL OR PAY A SUBSCRIPTION FEE TO MAKE USE OF THE
SURVEY. SOMETIMES PUBLIC POLLS ARE SPONSORED
3211
DIRECTLY BY ONE OR MORE ORGANIZATIONS. GALLUP
OFTENTIMES DOES THINGS WITH "NEWS WEEK," FOR
EXAMPLE. IT'S WHERE THE SOURCE OF MONEY IS COMING
FROM.
Q. THIS DOCUMENT DEALS WITH THE THEORY
OF EXCESSES. HAVE YOU RUN INTO THAT IN THE PUBLIC
POLLING DOCUMENTS?
A. YES.
Q. WHAT'S THE THEORY OF EXCESSES?
A. THE THEORY OF EXCESSES WOULD BE
THAT CIGARETTE SMOKING, IN THIS CASE, CIGARETTE
SMOKING IS NOT INHERENTLY DANGEROUS UNLESS INDULGED
IN TO EXCESS. IN OTHER WORDS, YOU CAN MISUSE IT BY
DOING IT TOO MUCH, BUT THAT NON-EXCESSIVE USE WOULD
BE PERCEIVED AS BEING SAFE.
Q. THAT'S ONE OF THE THINGS YOU
TOUCHED ON EARLIER IN SOME OF THE PUBLIC POLLS;
CORRECT?
A. CORRECT.
Q. NOW, ASIDE FROM SOMEONE JUST
SHOWING YOU THIS DOCUMENT IN ANOTHER LITIGATION
CASE, DO YOU HAVE ANY OTHER KNOWLEDGE ABOUT THIS
DOCUMENT?
A. NO.
Q. WHEN THE PRIVATE POLLING -- LET'S
JUST TALK GENERALLY FOR A SECOND. WHEN PRIVATE
POLLING IS DONE, DO THE POLLSTERS, ARE THE
POLLSTERS EVER ASKED -- BAD QUESTION.
3212
WHEN THE POLLSTERS ARE FINISHED
WITH THE PRIVATE POLLING, IS IT THEN UP TO THE
PERSON THAT SPENT THE MONEY AND COMMISSIONED THE
STUDY TO DECIDE WHAT TO DO WITH IT AND HOW TO ACT
WITH IT?
A. WITHIN LIMITS. THERE ARE ETHICAL

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

7 CONSIDERATIONS THAT POLLSTERS APPLY TO THEMSELVES.
8 ONE OF THEM HAS TO DO WITH SAYING THAT, FOR
9 PROPRIETARY POLL RELEASES, THAT A POLLSTER SHOULD
10 NOT PERMIT SELECTIVE RELEASE OF DATA. THAT IS TO
11 SAY, IF YOU COMMISSIONED A PRIVATE SURVEY THAT WAS
12 DELIVERED TO YOU AS YOUR PROPERTY, YOU SHOULDN'T,
13 AND I WAS A POLLSTER, I WOULD NOT ETHICALLY WANT TO
14 LET YOU RELEASE THREE QUESTIONS THAT PUT YOU IN A
15 GOOD LIGHT, SUPPRESSING THE QUESTIONS THAT PUT YOU
16 IN A BAD LIGHT. BECAUSE THAT WOULD BE MISLEADING.
17 BUT IT WOULD BE UP TO THE PERSON SPONSORING THE
18 SURVEY WHETHER THERE WOULD BE RELEASE AND IN WHAT
19 FORM THE RELEASE WOULD HAPPEN.
20 Q. I AM GOING TO FINISH UP MY POLL
21 LIKE THIS.
22 BY THE WAY, HAVE YOU EVER SEEN THIS
23 BEFORE?
24 A. NO.
25 Q. SO YOU DON'T EVEN KNOW WHAT I GOT
26 HERE?
27 A. CORRECT.
28 Q. WHEN DO YOU BELIEVE A CONSENSUS
3213
1 EXISTED IN AMERICA THAT SMOKING CIGARETTES CAUSED
2 LUNG CANCER?
3 A. PROBABLY THE EARLY 1990'S.
4 Q. STARTING IN AROUND 1957,
5 APPROXIMATELY, SO 1957 IS 44 YEARS AGO. 44 YEARS
6 AGO, WAS THERE ANY CONSENSUS IN AMERICA THAT
7 SMOKING CIGARETTES WAS A LIFE-THREATENING EVENT?
8 A. NOT IN MY PROFESSIONAL JUDGMENT.
9 Q. IN 1967, WAS THERE ANY CONSENSUS IN
10 AMERICA THAT SMOKING CIGARETTES, ASIDE FROM CAUSING
11 BRONCHITIS OR ASIDE FROM MESSING WITH YOUR WIND OR
12 ASIDE FROM MAKING YOUR TEETH OR YOUR FINGERS YELLOW
13 OR THOSE OTHER THINGS THAT YOU MENTIONED YESTERDAY,
14 WAS THERE A CONSENSUS THAT SMOKING CIGARETTES COULD
15 KILL YOU?
16 A. NOT IN MY PROFESSIONAL JUDGMENT.
17 Q. '74, '76, SAME ANSWER?
18 A. YES, SIR.
19 Q. '80, SAME ANSWER?
20 A. YES, SIR.
21 Q. '85?
22 A. STILL THE SAME ANSWER.
23 Q. OKAY. THAT'S MY LAST QUESTION.
24 THANK YOU VERY MUCH.
25 /// /// ///
26 /// /// ///
27 /// /// ///
28 /// /// ///
3214
1 CROSS-EXAMINATION
2
3 BY MR. LEITER:
4 Q. GOOD MORNING, LADIES AND GENTLEMEN.
5 GOOD MORNING, MR. FERREE.
6 A. GOOD MORNING, SIR.
7 Q. I'D LIKE TO BEGIN BY TALKING ABOUT
8 UFO'S, IF YOU DON'T MIND.
9 YOU TOLD THE JURY YESTERDAY THAT
10 THERE WAS A POLL CONDUCTED AND WHAT WAS THE YEAR
11 AGAIN?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

12 A. LET ME GO BACK AND CHECK. I
13 BELIEVE '87.
14 Q. ABOUT 1987, AND 88 PERCENT OF THE
15 PEOPLE, AND CORRECT ME IF MY NOTES A WRONG, THIS IS
16 JUST MY NOTES FROM YOUR TESTIMONY, 88 PERCENT OF
17 THE PEOPLE IN THAT POLL HAD HEARD OF UFO'S; IS THAT
18 RIGHT?
19 A. THAT IS CORRECT.
20 Q. AND WAS 49 PERCENT SAID THEY WERE
21 REAL?
22 A. THAT IS CORRECT.
23 Q. IS IT YOUR OPINION THAT ONE OUT OF
24 EVERY TWO AMERICANS IN 1987 THOUGHT THAT UFO'S ARE
25 REAL?
26 A. STRICTLY SPEAKING, IT IS MY OPINION
27 THAT IF THE QUESTION WERE ASKED OF THE AMERICAN
28 POPULATION THAT APPROXIMATELY 1 IN 2, 49 PERCENT,
3215
1 SUBJECT TO ANY MARGIN OF ERROR, WOULD ANSWER THE
2 QUESTION YES. I ALSO REGARD THIS QUESTION A FAIR
3 STATEMENT OF WHETHER -- I ALSO -- I AM TRYING TO
4 DRAW THE DISTINCTION BETWEEN THE RELIABILITY OF A
5 SURVEY QUESTION AND WHETHER IT IS TAPPING THE
6 UNDERLYING ATTITUDE. THAT'S WHY I SAY I WOULD
7 REGARD THIS AS A FAIR QUESTION.
8 Q. AND I AM GOING TO JOIN IN WITH MR.
9 PIUZE AND ASK YOU TO SLOW DOWN A LITTLE BIT SO THE
10 COURT REPORTER CAN GET YOUR ANSWERS AND WE CAN
11 UNDERSTAND THEM AS WELL.
12 IS WHAT YOU JUST SAID, IT IS YOUR
13 PROFESSIONAL JUDGMENT THAT IF ALL AMERICANS WERE
14 ASKED THAT QUESTION, "DO YOU BELIEVE UFO'S ARE
15 REAL," 50 PERCENT OF THEM WOULD ANSWER THE QUESTION
16 "YES"? THAT'S WHAT YOU ARE SAYING?
17 A. AT THE TIME, YES.
18 Q. IN 1987?
19 A. YES.
20 Q. NOW, IS THAT THE SAME AS SAYING
21 HALF OF AMERICANS BELIEVED IN UFO'S?
22 A. THAT GETS TO THE SECOND PART OF MY
23 LAST ANSWER. I BELIEVE THAT THAT WAS A FAIR
24 QUESTION TO GET AT THAT UNDERLYING CONCERN, YES.
25 Q. OKAY. SO IT'S YOUR PROFESSIONAL
26 JUDGMENT THAT IN 1987, HALF OF AMERICANS BELIEVED
27 IN UFO'S?
28 A. YES.
3216
1 Q. IS IT POSSIBLE THAT SOME PEOPLE WHO
2 ANSWERED THE QUESTION IN THAT POLL DIDN'T
3 UNDERSTAND THE QUESTION?
4 A. YES, OF COURSE.
5 Q. IS IT POSSIBLE THAT SOME PEOPLE
6 DIDN'T KNOW WHAT YOU MEANT BY UFO?
7 A. YES, THAT'S, OF COURSE, ALSO
8 POSSIBLE.
9 Q. AND IS IT POSSIBLE THAT SOME PEOPLE
10 WHO WERE ANSWERING THAT QUESTION DIDN'T UNDERSTAND
11 WHAT THE QUESTION MEANT BY THE WORD "REAL."
12 A. I'D BE LESS INCLINED TO ANSWER THAT
13 QUESTION IN THE AFFIRMATIVE.
14 CLEARLY, WITH ANY SURVEY QUESTION,
15 ONE HAS TO ASK WHETHER OR NOT THE PEOPLE IN GENERAL
16 ARE GOING TO BE INTERPRETING IT THE SAME WAY THE

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

PERSON WHO WROTE THE QUESTION WOULD.
AND THAT GETS TO THE QUESTION OF
INTERPRETATION, ABOUT WHICH I HAVE SPOKEN A FAIR
AMOUNT ON THE STAND PREVIOUSLY.
Q. AND THE INTERPRETATION IS NOT JUST
HOW THE POLLSTER INTERPRETS THE QUESTION, IT'S ALSO
HOW THE PEOPLE WHO ARE ASKED THE QUESTION
INTERPRETED THE QUESTION; RIGHT?
A. YES, IN PRINCIPLE.
Q. OKAY. SO IF SOME PEOPLE WERE
ASKED, "DO YOU BELIEVE UFO'S ARE REAL," THEY MIGHT
THINK IT MEANS IS THERE INTELLIGENT LIFE SOMEWHERE
3217
IN THE UNIVERSE, POSSIBLY; RIGHT?
A. THE QUESTION, ON ITS FACE, ASKS
WHETHER OR NOT UFO'S ARE REAL. THE ACTUAL WORDING
HERE WAS "IN YOUR OPINION, ARE UFO'S SOMETHING REAL
OR JUST PEOPLE'S IMAGINATION?"
IT DIDN'T SPECIFY OR ASK PEOPLE TO
DECLARE WHETHER THEY FELT THERE WERE EXTRA
TERRESTRIALS OR WHETHER THEY INVOLVED LITTLE GREEN
MEN OR WHETHER THEY WERE A CREW FROM EARTH FUTURE
VISITING BACK IN THE PAST. IT JUST ASKED, DO YOU
THINK THEY ARE REAL.
Q. I AM SORRY. AND THE REST IS ALL
INTERPRETATION?
A. IT IS NOT JUST INTERPRETATION, IT
IS SUBJECT TO THE POSSIBILITY OF MISUNDERSTANDING.
IT IS CERTAINLY SUBJECT TO BEING LOOKED AT IN THE
CONTEXT OF OTHER SURVEY QUESTIONS TO MAKE SURE THAT
THE QUESTION AND THE WORDING DO NOT NECESSARILY
CAUSE AN UNUSUAL RESULT.
THAT'S ONE OF THE REASONS I
EMPHASIZED REPEATEDLY THAT IT IS BEST TO LOOK AT
PATTERNS OF SURVEY QUESTIONS, NOT JUST INDIVIDUAL
QUESTIONS.
Q. OKAY. AND UFO STANDS FOR
UNIDENTIFIED FLYING OBJECT; CORRECT?
A. THAT IS CORRECT.
Q. IT DOESN'T, ON ITS FACE, TALK ABOUT
SPACESHIPS, DOES IT?
3218
A. IT DOES NOT.
Q. OKAY.
SO IS IT POSSIBLE THAT SOME PEOPLE
WHO WERE ANSWERING THAT QUESTION, ANSWERED IT
LITERALLY, THAT "ARE UNIDENTIFIED FLYING OBJECTS
REAL," MEANING ARE THERE OBJECTS UP THERE THAT
PEOPLE SEE THAT ARE UNIDENTIFIED?
A. I WOULD SUSPECT, BASED UPON MY
EXPERIENCE AND SURVEY RESEARCH, AND I HAVE WRITTEN
THOUSANDS AND THOUSANDS OF QUESTIONS AND SPOKEN
TO -- SPOKEN PERSONALLY TO HUNDREDS AND HUNDREDS OF
PEOPLE WHO HAVE ANSWERED SURVEY QUESTIONS THAT
THE -- THAT THE IMPORT OF THAT QUESTION FOR MOST
PEOPLE WAS, IS THERE SOMETHING THERE, WITHOUT
GETTING INTO WHAT IT WAS. NOT HAVE PEOPLE SEEN
THINGS. BUT IS THERE SOMETHING THERE.
THAT, AGAIN, IN LIGHT OF THIS
CONTROVERSY, IT IS NOT THAT THE GOVERNMENT OR
ANYONE ELSE MAINTAINS THAT NO ONE HAS EVER
EXPERIENCED SOMETHING THAT IS HARD TO EXPLAIN.
IT'S THAT THERE IS ALWAYS EITHER

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

SOME EXPLANATION THAT OTHER THAN A SPACE CRAFT OR SOME VEHICLE THAT HAS AN UNUSUAL EXPLANATION, THAT THE GOVERNMENT WOULD MAINTAIN THAT THERE'S NO EVIDENCE THAT THAT EXISTS.
Q. SO IN UNDERSTANDING AND INTERPRETING THE DATA THAT YOU GOT FROM THAT QUESTION, IS IT FAIR TO SAY THAT SOMETIMES YOU NEED

3219

TO GO BEHIND THE QUESTION ITSELF AND THE ANSWER THAT YOU GOT; RIGHT?
A. YES.
Q. OKAY. SOMETIMES YOU WANT TO LOOK AT OTHER SURVEYS; RIGHT?
A. THAT IS CORRECT.
Q. SOMETIMES YOU WANT TO LOOK AT OTHER INFORMATION ABOUT THE SUBJECT; RIGHT?
A. NO, I WOULDN'T NECESSARILY AGREE WITH THAT, DEPENDS ON WHAT THE INFORMATION WAS.
Q. OKAY. AND SOMETIMES YOU NEED TO UNDERSTAND THE CONTEXT IN WHICH THE QUESTION WAS BEING ASKED; RIGHT?
A. YES, OF COURSE.
Q. SO FOR EXAMPLE, IF, IN 1987, THERE HAD BEEN AN AWFUL LOT OF PUBLICITY ABOUT UFO'S, YOU MIGHT GET A HIGHER AFFIRMATIVE RATE TO THAT QUESTION, A HIGHER YES RATE TO THAT QUESTION; RIGHT?
A. NOT NECESSARILY, NOT IF THE QUESTION --
Q. YOU MIGHT?
A. I WOULD SAY NO, NOT NECESSARILY AT ALL. UNLESS YOU ARE GOING TO SAY IS ANYTHING THEORETICALLY POSSIBLE. OF COURSE, THE ANSWER IS, YES, IT IS.
BUT I WOULD SPECIFICALLY SAY THE PUBLICITY DOES NOT HAVE NECESSARILY A NORMAL LINK

3220

TO -- PUBLICITY OF AN ALLEGATION DOES NOT HAVE A NORMAL NECESSARY LINK TO PEOPLE'S PROPENSITY TO BELIEVE WHETHER THAT ALLEGATION IS TRUE, THAT IF THERE WERE INCREASE OF ATTENTION TO UFO'S, THAT DOES NOT NECESSARILY HAVE ANY CHANGE OR ANY FOLLOWING TO THE PROPORTION OF PEOPLE WHO BELIEVE THAT THEY WERE REAL.
IT WOULD CHANGE THE RESPONSES TO PEOPLE'S AWARENESS OF REPORTS, THAT, IT WOULD CHANGE.
Q. SO IT IS YOUR TESTIMONY THAT IF YOU WANT TO KNOW WHAT PEOPLE THOUGHT ABOUT UFO'S IN 1987, ALL YOU NEED TO DO IS LOOK AT THE POLLS; RIGHT?
A. I DIDN'T SAY THAT.
WHAT I SAID IS THE POLL -- WHAT I WOULD SAY IS THAT POLLS ARE THE VERY BEST SCIENTIFIC WAY OF FINDING OUT WHAT IS ON ORDINARY PEOPLE'S MINDS, AND HOW THEY PERCEIVE VARIOUS ASPECTS OF THEIR EXPERIENCE AND THEIR LIFE. THEY ARE NOT A PERFECT MEASURE, BUT THEY ARE A VERY POWERFUL MEASURE, DONE CORRECTLY. BUT THEY NEED TO BE LOOKED AT CRITICALLY.
Q. THEY NEED TO BE LOOKED AT CRITICALLY, AND IN YOUR OPINION, THEY ARE THE BEST WAY OF MEASURING WHAT PEOPLE THINK?

http://legacy.library.ucsf.edu/tid/whtp07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

27 A. SINGLE BEST, YES.
28 Q. AND YOU ARE A POLLSTER; RIGHT?
3221
1 A. THAT IS CORRECT.
2 Q. THIS IS WHAT YOU DO FOR A LIVING?
3 A. THAT IS CORRECT.
4 Q. YOU BELIEVE IN POLLS?
5 A. I BELIEVE THAT, YES, I BELIEVE THAT
6 POLLS ARE A POWERFUL INSTRUMENT IF USED CORRECTLY.
7 Q. NOW, LET'S TALK ABOUT YOUR
8 BACKGROUND A LITTLE BIT.
9 YOU ARE NOT A PH.D., ARE YOU?
10 A. THAT IS CORRECT.
11 Q. YOU WENT TO A YEAR OF LAW SCHOOL?
12 A. YES.
13 Q. AND THEN YOU DECIDED THAT YOU
14 DIDN'T WANT TO BE A LAWYER ANY MORE; RIGHT?
15 A. OR I DECIDED I NO LONGER HAD THE
16 AMBITION OF A LAWYER.
17 Q. AND I TAKE IT NOTHING OVER THE LAST
18 COUPLE DAYS HAS LED YOU TO SECOND-GUESS THAT
19 DECISION TO GO TO LAW SCHOOL?
20 A. WELL, QUITE FRANKLY, IT IS
21 SOMETHING THAT, LIKE ANY LIFE DECISION THAT PEOPLE
22 MAKE, ONE ALWAYS LOOKS BACK ON, CERTAINLY MY
23 DECISION TO LEAVE LAW SCHOOL HAD TO DO WITH MY
24 PERCEPTION OF MYSELF, BUT ALSO MY PROFOUND RESPECT
25 FOR THE LAW AND THE LEGAL PROCESS AND THE BELIEF
26 THAT THE AMERICAN ADVERSARY SYSTEM IS A VERY GOOD
27 WAY OF GETTING AT AND RESOLVING DISPUTES. AND I
28 BELIEVE, IN FACT, THAT THE ROLE THAT I AM PLAYING
3222
1 HERE, USING MY SUBSTANTIVE EXPERTISE TO PROVIDE
2 INFORMATION THAT CAN BE PART OF A LEGAL
3 DETERMINATION IS, EMINENTLY APPROPRIATE FROM BOTH
4 THE ACADEMIC STANDPOINT AND FROM THE SURVEY
5 STANDPOINT.
6 SO IN A SENSE, IT DOES REFLECT THE
7 SAME KIND OF CONSIDERATIONS, WHETHER I WOULD
8 PERSONALLY WISH TO BE AN ATTORNEY OR NOT MYSELF.
9 Q. I APOLOGIZE. I WAS ACTUALLY
10 KIDDING.
11 A. I FIGURED YOU PROBABLY WERE, BUT
12 THAT'S ALL RIGHT. I TAKE ANY QUESTION I AM ASKED
13 SERIOUSLY AND I TAKE ANY ANSWER I GIVE OUT VERY
14 SERIOUSLY.
15 Q. MR. PIUZE JUST ASKED ME TO REMIND
16 YOU THAT IF YOU WERE A LAWYER, YOU WOULD HAVE TO
17 SLOW DOWN TOO.
18 A. FORTUNATELY, STUDENTS DON'T HAVE
19 QUITE AS MUCH POWER OVER ME IN ACADEMICS AS A
20 JUDGES AND OTHERS DO IN A COURTROOM.
21 THE COURT: I ALWAYS EXERCISE MY POWER IN
22 RESTRAINT.
23 THE WITNESS: AND I APPRECIATE THAT VERY
24 MUCH, YOUR HONOR.
25 Q BY MR. LEITER: NOW, YOU LEFT LAW
26 SCHOOL AND YOU WENT INTO A GRADUATE SCHOOL; IS THAT
27 RIGHT?
28 A. THAT IS CORRECT.
3223
1 Q. AND THAT WAS GOING TO BE A PH.D.
2 PROGRAM?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

A. THAT IS RIGHT.
Q. BUT YOU LEFT BEFORE YOU GOT YOUR
PH.D.?
A. THAT IS CORRECT. I LEFT WITH MY
DISSERTATION BEGUN WITH THE EXPECTATION THAT I
WOULD TAKE A POSITION AT THE UNIVERSITY OF
CONNECTICUT. AND AS I WAS ENGAGING IN THAT
POSITION THAT I WOULD FINISH UP THE DISSERTATION
OVER THE NEXT YEAR OR TWO, THAT'S AN AMBITION THAT
MANY PEOPLE WHO LEAVE GRADUATE SCHOOL UNDER SIMILAR
CIRCUMSTANCES HAVE. IT IS AN AMBITION THAT
OFTENTIMES DOESN'T GET REALIZED AS THE DAY-TO-DAY
PRESSURES OF A JOB BUILD UP AND BECOMES EASIER TO
CONCENTRATE ON WHAT YOU ARE IMMEDIATELY DOING THAN
FINISHING THIS LONG-TERM PROJECT.
IN MY CASE, UNLIKE SOME PEOPLE WHO
ARE TOLD YOU MUST FINISHED IN THREE YEARS OR YOUR
JOB WILL BE TERMINATED, IT WAS FURTHER COMPLICATED
BY PEOPLE SAYING, WHAT WE COUNT ON IS YOUR
KNOWLEDGE AND EXPERTISE, WE DON'T REALLY CARE IF
YOU FINISH THE DISSERTATION, WHICH MEANT THAT I
DIDN'T FINISH IT.
Q. OKAY. SO YOU DIDN'T GET YOUR
PH.D.?
A. THAT IS CORRECT.
Q. AND YOU WENT OUT INTO THE WORLD TO
3224
HAVE YOUR CAREER.
NOW, YOU TEACH BUT YOU ARE NOT A
PROFESSOR; CORRECT?
A. YES, THAT IS BECAUSE THE TITLE
PROFESSOR AT MOST UNIVERSITIES IS LIMITED TO PEOPLE
WITH PH.D.'S.
Q. AND YOU WRITE ARTICLES FROM TIME TO
TIME?
A. THAT IS CORRECT.
Q. YOUR ARTICLES GET PUBLISHED IN PEER
REVIEWED JOURNALS?
A. YES, FROM TIME TO TIME. AND I AM
AN ACTIVE MEMBER OF THE VARIOUS PROFESSIONAL
NETWORKS I MENTIONED BEFORE.
Q. AND THERE ARE PEER REVIEW JOURNALS
IN THE FIELD OF POLLING?
A. YES.
Q. YOU ARE NOT A PSYCHOLOGIST?
A. I AM A POLITICAL SCIENTIST BY
BACKGROUND.
Q. YOU STUDIED POLITICAL SCIENCE BUT
YOU ARE NOT A PSYCHOLOGIST?
A. CORRECT.
Q. AND YOU ARE NOT A PSYCHIATRIST?
A. TRUE.
Q. AND YOU ARE NOT A HISTORIAN?
A. TRUE, IN THE SENSE THAT I HAVE NOT
FORMALLY STUDIED HISTORY OR GOTTEN A DEGREE IN
3225
HISTORY OR THE LIKE.
MANY OF THE TECHNIQUES SUCH AS
HISTORIANS WOULD USE OVERLAP WITH THE TECHNIQUES
USED BY SOCIAL SCIENTISTS. THAT'S THE REASON FOR
MY ANSWERING THE QUESTION THAT WAY.
THE SOCIAL SCIENCE, IN GENERAL, AND
HISTORY IS AT LEAST A SOCIAL SCIENCE, OVERLAP A

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

8 GREAT DEAL IN TERMS OF THEIR SUBJECT MATTER AND
9 TYPES OF THE METHODS THEY USE.
10 Q. BUT YOU DON'T HAVE A DEGREE IN
11 HISTORY?
12 A. THAT IS CORRECT.
13 Q. AT ANY LEVEL, UNDERGRADUATE,
14 GRADUATE?
15 A. CORRECT.
16 Q. AND YOU DON'T HOLD YOURSELF OUT AS
17 A HISTORIAN?
18 A. CORRECT.
19 Q. AND YOU DON'T TEACH HISTORY?
20 A. CORRECT.
21 Q. AND YOU HAVEN'T APPLIED -- LET ME
22 ASK THIS QUESTION. DO YOU UNDERSTAND WHAT THE
23 HISTORICAL METHOD IS?
24 A. THAT WORD PROBABLY HAS DIFFERENT
25 MEANINGS IN DIFFERENT CONTEXTS. BUT IF ONE IS
26 REFERRING TO, IN GENERAL, THE COLLECTION OF THE
27 DOCUMENTS THAT RELATED EVIDENTIARY MATERIAL TO PUT
28 TOGETHER A PICTURE OF WHAT HAPPENED IN THE PAST, I
3226
1 WOULD SAY I HAVE A GENERAL UNDERSTANDING OF WHAT IT
2 IS.
3 Q. HAVE YOU APPLIED THE HISTORICAL
4 METHOD TO GO BACK AND LOOK AT WHAT PEOPLE SAW ABOUT
5 TOBACCO, WHAT PEOPLE HEARD ABOUT TOBACCO IN THE
6 1980'S OR THE '70'S OR THE '60'S OR THE '50'S, I
7 MEAN, IN A SYSTEMATIC COMPREHENSIVE WAY?
8 A. ONLY BY USING CONTEMPORANEOUS POLL
9 RESULTS WHICH ARE, THEMSELVES, HISTORICAL
10 DOCUMENTS, OF COURSE, TO SEE HOW PEOPLE ANSWERED
11 QUESTIONS WHICH ARE PLACED TO THEM ON SURVEYS AND
12 WHAT THIS REFLECTS ON WHAT WAS ON THEIR MIND. I
13 DID NOT DO A CONTENT ANALYSIS OF NEWSPAPER,
14 COLUMN-INCHES -- TWO WORDS, COLUMN WITH INCHES WITH
15 A HYPHEN BETWEEN THEM.
16 Q. SO OTHER THAN LOOKING AT POLL
17 RESULTS OVER TIME, WHICH YOU TESTIFIED ABOUT, YOU
18 HAVEN'T GONE BACK AND LOOKED SYSTEMATICALLY AT WHAT
19 PEOPLE AT A GIVEN TIME SAW OR HEARD ABOUT TOBACCO;
20 RIGHT?
21 A. ONLY INSOFAR AS REFLECTED IN THEIR
22 ANSWERS TO SURVEY QUESTIONS, THAT IS CORRECT.
23 Q. AND WE WILL GET TO THAT IN A
24 SECOND. BUT MY QUESTION WAS, YOU HAVEN'T GONE BACK
25 AND LOOKED AT NEWSPAPERS?
26 A. NO.
27 Q. MAGAZINES, TELEVISION, RADIO?
28 A. NO.
3227
1 Q. YOU DON'T KNOW WHAT MESSAGES PEOPLE
2 GOT AT DIFFERENT POINTS OF TIME FROM DIFFERENT
3 SOURCES; RIGHT, OTHER THAN IN THE GENERAL SENSE
4 THAT YOU TESTIFIED ABOUT THIS MORNING?
5 A. AND THEIR REACTION TO SURVEY
6 QUESTIONS, IT SHOULD ALSO BE POINTED OUT THAT
7 FINDING OUT WHAT WAS IN THE MEDIA DOESN'T TELL YOU
8 WHAT PEOPLE SAW EITHER. IT ONLY TELLS YOU WHAT WAS
9 AVAILABLE FOR THEM TO SEE.
10 Q. MY QUESTION WAS WHAT YOU HAVE DONE.
11 A. FAIR ENOUGH.
12 Q. IN PUTTING ASIDE YOUR LOOKING AT

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

POLLING DATA, WHICH WE WILL TALK ABOUT, YOU HAVEN'T GONE BACK AND DONE THAT KIND OF REVIEW, HAVE YOU?
A. CORRECT.
Q. YOU HAVEN'T SEEN WHAT THE PUBLIC SAW OR WHAT WAS THE PUBLIC, WHAT WAS AVAILABLE FOR THE PUBLIC TO SEE IN THE '80'S, '70'S, '60'S OR '50'S FROM THE SURGEON GENERAL IN A COMPREHENSIVE WAY; RIGHT?
A. CORRECT.
Q. OR FROM THE AMERICAN CANCER SOCIETY?
A. THAT IS CORRECT, OR ANY OTHER PARTICULAR SOURCE.
Q. OR ANY OTHER PUBLIC HEALTH ORGANIZATION?
A. CORRECT.

3228

Q. OR FROM THE STATE GOVERNMENT OF CALIFORNIA?
A. NO.
Q. OR FROM LOCAL GROUPS HERE IN LOS ANGELES?
A. NOR HAVE I EVER CLAIMED TO.
Q. OR WHAT WAS IN TEXTBOOKS THAT KIDS SAW IN SCHOOL IN THE '50'S OR THE '60'S?
A. CORRECT.
Q. OR WHAT THE TOBACCO INDUSTRY SAID?
A. CORRECT. EXCEPT, OF COURSE, I HAVE SEEN DOCUMENTS WHICH WERE JUST MENTIONED.
Q. I KNOW YOU HAVE SEEN SOME DOCUMENTS, BUT I AM FOCUSING MY QUESTIONS ON INFORMATION THAT WAS MADE AVAILABLE TO THE PUBLIC.
A. UH-HUH.
Q. HAVE YOU LOOKED AT HOW THE EXTENT TO WHICH NEWSPAPERS, MAGAZINES, TELEVISION, COVERED WHAT THE TOBACCO INDUSTRY WAS SAYING?
A. NOT SYSTEMATICALLY, NO.
Q. OKAY, OR WHAT EDITORIAL WRITERS WERE WRITING ABOUT THE TOBACCO INDUSTRY IN THE '80'S, OR OF THE '70'S OR THE '60'S OR THE '50'S?
A. NO. BECAUSE I HAVE BEEN LOOKING EXPLICITLY AT PUBLIC ATTITUDES AND AWARENESS OR BELIEF WITH USING SURVEY RESEARCH AS THE MEANS, AND I DO NOT CLAIM TO DO ANYTHING ELSE SYSTEMATICALLY.
Q. OR, MORE GENERALLY, WHAT THE

3229

POPULAR CULTURE WAS CONCERNING SMOKING AT ANY PARTICULAR POINT IN TIME?
A. I THINK I DISSENT ON THAT ONE A LITTLE BECAUSE I THINK THAT THE POLLING, AS I SAID BEFORE, IS, PERHAPS, THE BEST SINGLE MEASURE OF WHAT POPULAR CULTURE AT VARIOUS TIMES IS OR CAN BE.
Q. I UNDERSTAND THAT. OTHER THAN POLLING?
A. CORRECT.
Q. AND IN YOUR VIEW, IN ORDER TO UNDERSTAND WHAT PEOPLE THOUGHT, IN THE '80'S OR THE '70'S OR THE '60'S OR THE '50'S, REALLY THE POLLS TELL YOU WHAT YOU NEED TO KNOW?
A. I THINK SO.
THE CONTEMPORANEOUS SURVEYS, THAT'S IMPORTANT, SURVEYS DONE AT THE TIME, GIVE A PRETTY ACCURATE PICTURE OF THE MATERIALS THAT THEY ARE

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

ATTEMPTING TO MEASURE. THEY OBVIOUSLY CAN'T
MEASURE SOMETHING THEY WEREN'T ASKING ABOUT.
Q. AND YOU, SITTING HERE IN THE YEAR
2001, CAN LOOK BACK TO THE 1980'S OR '70'S OR '60'S
OR '50'S AND DETERMINE WHAT PEOPLE THOUGHT BACK
THEN AND WHAT PEOPLE UNDERSTOOD BACK THEN AND WHAT
PEOPLE KNEW BACK THEN, SIMPLY BY LOOKING AT POLLING
RESULTS?
A. TO A GREAT EXTENT, YES.
MR. LEITER: YOUR HONOR, THIS MIGHT BE A
GOOD TIME TO BREAK.
3230
THE COURT: ALL RIGHT. LADIES AND
GENTLEMEN, WE ARE GOING TO TAKE OUR MORNING BREAK.
IT IS NOW 10:30. WE WILL BE BACK AT QUARTER TO
11:00. DON'T DISCUSS THE CASE WITH ANYONE.

(THE FOLLOWING PROCEEDINGS
WERE HELD IN OPEN COURT OUT
OF THE PRESENCE OF THE JURY:)

MR. LEITER: YOUR HONOR, I NEED A LITTLE
GUIDANCE FROM THE COURT ON THE ISSUE THAT CAME UP
DURING HIS DIRECT EXAMINATION.
THE COURT: YES.
MR. LEITER: HE REFERRED TO AN ARTICLE BY
SYED AND O'BRIEN, AND THE QUESTION WAS, DOES THIS
INVOLVE CRITICISM OF THE TOBACCO INDUSTRY'S
POSITION IN LITIGATION OR DOES IT INVOLVE SOMETHING
MORE GENERAL, AND HE SAID KIND OF BOTH.
THE COURT: HE DID.
MR. LEITER: AND THE PROBLEM IS, YOUR
HONOR, THE ARTIFICIAL DEALS SOLELY AND EXPLICITLY
WITH SOMETHING THAT REYNOLDS DID IN A COUPLE
LAWSUITS USING POLLS, THE GALLUP ORGANIZATION
DISAGREEING WITH IT AND PUBLISHING A PAPER ABOUT IT
AND THE PEOPLE INVOLVED IN THAT CASE IN FLORIDA
RESPONDING TO IT.
NOW, THAT DISPUTE HIT THE MEDIA,
BECAUSE THE GALLUP ORGANIZATION ISSUED THEIR PAPER
3231
PUBLICLY. BUT THE DISPUTE ITSELF IS ENTIRELY
REVOLVING AROUND WHAT HAPPENED, THE STRATEGY THAT
LAWYERS USED IN A LAWSUIT IN FLORIDA, WHICH IS NOT
A STRATEGY WE USED HERE, AND --
THE COURT: I CAN SEE THE RELEVANCE
OBJECTION TO THAT AND I SAW IT AT THE TIME.
LET ME READ THE DOCUMENT. THE
DOCUMENT HAS NOT BEEN ADMITTED INTO EVIDENCE OR
SHOWN TO THE JURY. IT HAS JUST SIMPLY BEEN MARKED.
COUNSEL FOR THE PLAINTIFF DID ASK,
IS IT A RELIABLE AUTHORITY. THERE WAS AN ANSWER TO
THAT, BUT THERE WAS NO MOTION TO ADMIT IT.
MR. LEITER: AND MY CONCERN, YOUR HONOR,
IS NOT JUST WITH THE DOCUMENT BUT WITH HIS
TESTIMONY ABOUT THE TOBACCO INDUSTRY MISUSING
POLLING DATA. AND I AM CONCERNED BECAUSE I DON'T
WANT TO CROSS-EXAMINE HIM ON THIS AND RAISE IT
FURTHER. AND I WOULD LIKE TO MOVE TO STRIKE THAT
TESTIMONY.
THE COURT: WELL, THERE WASN'T MUCH OF
IT. THERE WAS ONLY MAYBE ONE OR TWO TINY ANSWERS.
AND AS SOON AS THE OBJECTIONS WERE RAISED, I THINK

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

IT WAS PRETTY MUCH BACKED AWAY FROM, AT LEAST
ACCORDING TO MY NOTES.
MAY I READ THE DOCUMENT.
MR. LEITER: YES.
THE COURT: BUT YOUR PRIMARILY CONCERN IS
IF THERE'S A CHANCE THAT THE COURT IS GOING TO LET
3232
THIS INTO EVIDENCE, YOU WANT TO KNOW WHETHER OR NOT
YOU ARE GOING TO NEED TO EXAMINE ON IT.
MR. LEITER: THAT'S PART OF IT AND I
WOULD LIKE TO MOVE TO STRIKE THOSE QUESTIONS AND
ANSWERS.
MR. PIUZE: I CAN EASE EVERYBODY'S MIND
AS TO ISSUE NUMBER 1, I PURPOSELY HAD THAT MARKED
AS A COURT EXHIBIT AS OPPOSED TO A PLAINTIFF
EXHIBIT, BECAUSE I DON'T INTEND TO OFFER IT INTO
EVIDENCE. AND I WANT IT THERE TO HELP ME LATER FOR
CROSS-EXAMINATION, DEPENDING ON WHAT MORRIS'S
WITNESSES SAY.
THE COURT: THEN I DON'T NEED TO LOOK AT
IT. I DON'T NEED TO GET TO THAT POINT.
I WILL DENY THE MOTION TO STRIKE AT
THIS TIME BECAUSE I THINK, BASICALLY, THE
STATEMENTS WERE ESSENTIALLY INNOCUOUS. AND IN
ESSENCE, THOUGH, THIS WITNESS DID NOT SAY IT WAS
USED FOR PUBLIC PURPOSES, THEREFORE, THE RELEVANCE,
THE RELEVANCE THRESHOLD WAS CROSSED. NOW, WHETHER
OR NOT THAT'S TRUTHFUL OR NOT IS NOT MY CONCERN.

(AT THIS TIME, A RECESS
WAS TAKEN.)

(THE FOLLOWING PROCEEDINGS
WERE HELD IN OPEN COURT IN
THE PRESENCE OF THE JURY.)
3233
THE COURT: MR. LEITER.

G. DONALD FERREE,
CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN
PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND
AND TESTIFIED FURTHER AS FOLLOWS:

CROSS-EXAMINATION (RESUMED)

BY MR. LEITER:
Q. MR. FERREE, I WANT TO SEE IF I CAN
CLEAR UP ONE ISSUE THAT CAME UP DURING YOUR
EXAMINATION, DIRECT EXAMINATION.
REMEMBER BEING SHOWN THIS CHART?
A. I DO.
Q. AND THIS IS THE RESULT OF THE POLL
TAKEN WHEN?
A. IN 1998 BY THE ROPER ORGANIZATION.
Q. OKAY. AND THIS IS NOT A MEASURE OF
HOW RISKY PEOPLE VIEW THESE VARIOUS SUBSTANCES TO
BE, IS IT?
A. THAT IS CORRECT.
Q. IT'S JUST A MEASURE OF HOW MANY
PEOPLE SEE THEM AS RISKY?
A. YES, THAT IS CORRECT.
Q. SO IT'S NOT FAIR TO SAY, FROM THIS

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

28 POLL, THAT PEOPLE SEE HIGH SALT FOODS, OVER WEIGHT,
3234
1 AS RISKY AS SMOKING, THAT'S NOT WHAT THIS IS MEANT
2 FOR?
3 A. IT'S THE PROPORTION OF PEOPLE WHO
4 PERCEIVED HIGH SALT FOODS AS BEING RISKY IS
5 APPROXIMATELY THE SAME AS THE PROPORTION THAT THINK
6 SMOKING IS RISKY. IT DOES NOT DIRECTLY ADDRESS THE
7 DEGREE OF RISK; CORRECT.
8 Q. THERE IS ALSO SOMEWHERE, ALTHOUGH
9 IT IS VERY, VERY HARD TO SEE, A LINE IN THE SMOKING
10 BAR, THAT LOOKS LIKE IT IS SOMEWHERE BETWEEN 60 AND
11 80 PERCENT.
12 A. THAT IS CORRECT.
13 Q. AND WHAT DOES THAT REPRESENT AGAIN?
14 A. THAT REPRESENTS THE OVERALL BAR IS
15 THE COMBINATION OF PEOPLE WHO FEEL THAT THE
16 BEHAVIOR IN QUESTION REPRESENTS, IS DANGEROUS AT
17 ANY LEVEL AND THOSE WHO SAY THAT IT IS DANGEROUS IF
18 INDULGED IN, IF ENGAGED IN TO EXCESS.
19 THE FACT IS THAT IN SMOKING, THE
20 LARGEST GROUP, ABOUT 70 PERCENT OF THE POPULATION
21 AT LARGE, FELT SMOKING WAS DANGEROUS AT ANY LEVEL,
22 HOWEVER, THEY DIDN'T SAY HOW DANGEROUS, JUST
23 DANGEROUS.
24 Q. SO BY 1998, ABOUT 70 PERCENT OF THE
25 PEOPLE WHO RESPONDED TO THIS POLL SAID ANY SMOKING
26 IS DANGEROUS?
27 A. CORRECT.
28 Q. ANOTHER POINT THAT YOU MADE DURING
3235
1 YOUR DIRECT EXAMINATION AND I WANT TO MAKE SURE I
2 HAVE IT ACCURATELY, IS IN YOUR OPINION, YOU BELIEVE
3 THERE WAS NO CONSENSUS AS TO WHETHER SMOKING CAUSES
4 LUNG CANCER UNTIL 1990?
5 A. APPROXIMATELY, CORRECT.
6 Q. ABOUT 1990.
7 AND I WANT TO COME BACK TO THE WORD
8 "CONSENSUS" IN A MINUTE. BUT THAT'S YOUR OPINION;
9 CORRECT?
10 A. THAT IS CORRECT.
11 Q. IS IT ALSO YOUR OPINION THAT THERE
12 WAS NO CONSENSUS UNTIL 1990 THAT SMOKING WAS
13 DANGEROUS?
14 A. YOU MIGHT ARGUE THAT THERE WOULD BE
15 CONSENSUS THAT IT WAS HARMFUL BUT YOU WOULD HAVE TO
16 GET INTO THE QUESTION OF WHAT HARMFUL MEANT, WAS
17 THERE AN -- AND I HAVE TO LOOK SPECIFICALLY BACK TO
18 THE NUMBERS. BUT SINCE NUMBERS RISE SLIGHTLY
19 FASTER FOR HARM THAN THEY DO FOR CAUSING LUNG
20 CANCER, THE ARGUMENT MADE SOMEWHAT EARLIER, BUT YOU
21 HAVE TO, AS YOU QUITE PROPERLY ASKED EARLIER, ASK
22 WHAT DOES HARM MEAN.
23 Q. SOMEWHAT EARLIER BUT YOU DON'T HAVE
24 AN OPINION AS TO HOW MUCH EARLIER?
25 A. NOT IMMEDIATELY.
26 Q. AND AGAIN, THIS IS ALL BASED ON
27 YOUR REVIEW OF POLLING DATA?
28 A. YES.
3236
1 Q. AND BASED ON YOUR REVIEW OF POLLING
2 DATA, WAS IT NOT UNTIL 1990 THAT THERE WAS A
3 CONSENSUS THAT SMOKING COULD SHORTEN YOUR LIFE?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

A. AT LEAST UNTIL THEN, YES.
Q. SO BEFORE 1990 THERE WAS NOT A CONSENSUS THAT SMOKING COULD SHORTEN LIFE, IS THAT YOUR OPINION?
A. YES, IN THE ABSTRACT, LET ALONE WHAT INDIVIDUAL PEOPLE HAVE FELT ABOUT THEIR OWN LIVES BEING SHORTENED, WHICH IS NOT THE SAME THING AS YOU MENTIONED EARLIER.
Q. NOW, DEFINE FOR US AGAIN, YOUR DEFINITION OF "CONSENSUS."
A. I MENTIONED THAT I TEND TO USE 90 PERCENT AS A ROUGH YARDSTICK, NOT AS A MAGIC DIVIDING LINE, WHERE JUST BELOW IT IS NOT CONSENSUS AND JUST ABOVE IT IS CLEARLY CONSENSUS. CONSENSUS IS NON-UNANIMITY. IT IS A SITUATION WHICH A PERSON ON THE MINORITY SIDE WOULD PERCEIVE THEMSELVES AS BEING IN A VERY SMALL GROUP AND A PERSON ON THE MAJORITY SIDE WOULD PERCEIVE THEMSELVES AS BEING IN AN OVERWHELMINGLY LARGE GROUP. IT IS NOT MAGICAL AT 10 PERCENT BUT IT NOT SOMETHING I WOULD BE COMFORTABLE WITH, AND I THINK MANY OTHERS WOULD AS WELL. I AM NOT SUGGESTING A MAGIC, YES/NO LINE ON THAT.
Q. NOW, THAT DEFINITION OF CONSENSUS, THAT YOU JUST TOLD THE JURY, IS THAT A GENERALLY

3237

ACCEPTED DEFINITION AMONG ALL POLLSTERS?
A. I AM NOT SURE THERE IS SUCH A THING.
I AM NOT SURE THAT THERE HAS, NOT TO MY KNOWLEDGE, BEEN RESEARCH OR ANY OTHER THING ASKING PEOPLE AT WHAT LEVEL WOULD YOU CONSIDER CONSENSUS TO EXIT. AND I WILL LEAVE IT THERE.
Q. AMONG PEOPLE IN YOUR PROFESSION, THERE'S NO CONSENSUS AS TO WHAT CONSENSUS MEANS?
A. THAT'S ARTFULLY PUT AND I WOULD SAY THERE IS NO BRIGHT LINE, AGAIN. THE HIGHER THE NUMBER THE MORE COMFORTABLE PEOPLE WOULD BE AND I THINK THAT FEW PEOPLE WOULD, HOWEVER, DISSENT FROM MY CHARACTERIZATION SAYING IT'S CLEARLY WRONG. WHETHER THEY AGREE TO IT THEMSELVES OR NOT IS A DIFFERENT QUESTION.
Q. BUT 90 PERCENT IS THE FIGURE YOU ARE USING?
A. THAT'S WHAT I AM USING, YES.
Q. NOW, YOU ARE FAMILIAR WITH OTHER POLLSTERS USING DIFFERENT NUMBERS FOR CONSENSUS?
A. NOT SPECIFICALLY. I AM JUST MERELY SAYING I AM NOT AWARE THAT THERE IS AN AFFIRMATIVE AGREEMENT ON WHAT THAT PARTICULAR NUMBER MEANS, UNLIKE, SAY, WHERE THERE'S A STANDARD DEFINITION OF WHAT MARGIN OF ERROR IS, THERE IS A STANDARD DEFINITION OF THAT. I AM NOT SURE THAT I WOULD SAY THERE IS A STANDARD DEFINITION OF WHAT CONSENSUS

3238

IS.
Q. MARGIN IS A TERM OF ART IN POLLING?
A. YES, THAT IS, IT HAS A PRECISE MATHEMATICAL MEANING.
Q. CONSENSUS IS NOT; RIGHT?
A. BASICALLY, CORRECT.
Q. HAVE YOU EVER USED 64 PERCENT AS A VERY COMPELLING, SINGLE-MINDED RESPONSE FROM

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

9 PEOPLE?
10 A. I DO NOT BELIEVE I HAVE. IF I HAD
11 A NUMBER THAT LARGE, I MIGHT CALL -- IN FACT, I
12 WOULD TYPICALLY SAY SOMETHING LIKE TWO TO ONE
13 MAJORITY. OR I MIGHT EVEN SAY A STRONG MAJORITY
14 WOULD NOT. I WOULD BE VERY LOATHED TO USE THE WORD
15 "CONSENSUS" THERE.
16 Q. WOULD YOU USE THE PHRASE "SINGLE
17 MINDEDNESS," TO 64 PERCENT?
18 A. I DON'T BELIEVE, IF I -- I DON'T
19 BELIEF I WOULD, NO.
20 Q. WHAT ABOUT "TRULY REMARKABLE"?
21 A. IT WOULD DEPEND ON THE CONTEXT.
22 "TRULY REMARKABLE" IS A TOTALLY DIFFERENT -- I CAN
23 IMAGINE A CIRCUMSTANCE WHERE 30 PERCENT WOULD BE
24 TRULY REMARK AND I CAN IMAGINE A SITUATION WHICH 95
25 PERCENT WOULD NOT BE.
26 Q. "HARTFORD CURRENT," TRY TO ZERO IN
27 ON THE DATE, SUNDAY, SEPTEMBER 24, 1989.
28 THIS IS "CONNECTICUT RESIDENTS SEE
3239
1 DRUGS AS BIGGEST PROBLEM."
2 DO YOU REMEMBER THIS PARTICULAR
3 POLL?
4 A. IN GENERAL -- LET ME SEE THE DATE.
5 Q. IT WAS SEPTEMBER 24, 1989?
6 A. YES, I RECALL DOING A SURVEY ON
7 THAT AND I CERTAINLY RECALL THAT SORT OF ARTICLE.
8 Q. AND THIS IS A QUOTE THAT IS
9 ATTRIBUTED TO YOU. FIRST OF, LET ME READ THE TEXT?
10 "64 PERCENT OF THOSE POLLED
11 VOLUNTEERED DRUGS WHEN ASKED WHAT THEY
12 THOUGHT WAS THE BIGGEST PROBLEM FACING
13 THE COUNTRY TODAY."
14 AND HERE'S THE QUOTE THAT IS
15 ATTRIBUTED TO YOU.
16 "WE HAVE NEVER BEFORE
17 ENCOUNTERED SO SINGLE-MINDED A
18 RESPONSE TO THIS QUESTION, SAID G.
19 DONALD FERREE, JR., DIRECTOR OF THE
20 POLL CONDUCTED BY THE INSTITUTES FOR
21 SOCIAL INQUIRY AT THE UNIVERSITY OF
22 CONNECTICUT. WHILE THIS UNDOUBTEDLY
23 REFLECTS, IN PART, A HEIGHTENED MEDIA
24 ATTENTION TO THE PROBLEM, IT IS,
25 NONETHELESS, A TRULY REMARKABLE
26 RESPONSE."
27 IS THAT WHAT YOU SAID?
28 A. I BELIEVE SO.
3240
1 Q. I WANT TO GO BACK TO THE 1950'S AND
2 WORK OUR WAY FORWARD ON SOME OF THE POLLS THAT YOU
3 TALKED ABOUT.
4 A. SURE.
5 Q. ARE YOU FAMILIAR WITH A PERIODICAL
6 CALLED "THE PUBLIC PERSPECTIVE"?
7 A. YES.
8 Q. WHAT IS THAT?
9 A. "THE PUBLIC PERSPECTIVE" IS A
10 PUBLICATION OF THE ROPER CENTER FOR PUBLIC OPINION
11 RESEARCH. IT IS A COMPENDIUM OF POLLING DATA THAT
12 IS PUBLISHED SIX TIMES PER YEAR AND HAS BOTH
13 ARTICLES ON SUBSTANTIVE AND METHODOLOGICAL POINTS

http://legacy.library.ucsf.edu/tid/whp07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

14 AND PULLS TOGETHER DATA ON A VARIETY OF SUBJECTS AT
15 VARIOUS TIMES.
16 Q. I GOING TO GO BACK AND SLOW DOWN
17 WITH YOU.
18 IT'S A PERIODICAL PUT OUT BY THE
19 ROPER CENTER?
20 A. FOR PUBLIC OPINION RESEARCH.
21 Q. AND THAT'S WHERE YOU WORKED FOR
22 MANY, MANY YEARS?
23 A. THAT IS CORRECT.
24 Q. SO YOU ARE VERY FAMILIAR WITH THE
25 PERIODICAL?
26 A. THAT IS CORRECT.
27 Q. READ IT REGULARLY?
28 A. YES.
3241
1 Q. CONTRIBUTE TO IT REGULARLY?
2 A. YES.
3 Q. DID YOU EDIT IT?
4 A. NOT IN A FORMAL SENSE. I EDITED
5 SOME ARM. I WAS NOT A FORMAL EDITOR OF IT.
6 Q. BUT YOU OFTEN LOOKED AT IT BEFORE
7 IT CAME OUT?
8 A. YES.
9 Q. YOU HAD THE OPPORTUNITY TO CORRECT
10 THINGS OR COMMENT ON THINGS.
11 A. SOMETIMES. NOT ALWAYS.
12 Q. NOW, WERE YOU AT THE ROPER CENTER
13 IN THE SUMMER OF 1998?
14 A. YES, I WAS.
15 Q. I WANT TO SHOW YOU, IN ADDITION, IS
16 THIS PUBLIC PERSPECTIVE, DOES THIS LOOK FAMILIAR?
17 A. YES, IT DOES.
18 Q. THIS IS THE EDITION OF
19 AUGUST-SEPTEMBER, 1998. DO YOU SEE THAT?
20 A. YES, I DO.
21 Q. AND YOU ARE STILL AT THE ROPER
22 CENTER; IS THAT RIGHT?
23 A. CORRECT.
24 Q. AND ONE OF THE ISSUES THAT WAS
25 DISCUSSED IN THIS EDITION WAS SMOKING; RIGHT?
26 A. THAT IS CORRECT.
27 Q. I AM GOING TO TURN TO PAGE 15.
28 A. JUST A MOMENT, PLEASE.
3242
1 Q. DO YOU HAVE THAT?
2 A. I HAPPEN TO HAVE A COPY OF THE
3 MAGAZINE.
4 Q. I AM TURNING TO PAGE 15. DO YOU
5 HAVE IT?
6 A. YES, I DO.
7 Q. AND THE HEADLINE FROM THIS ROPER
8 CENTER PUBLICATION IS "THE HEALTH RISKS IN SMOKING
9 HAVE LONG BEEN RECOGNIZED." DO YOU SEE THAT?
10 A. THAT'S WHAT THE HEADLINE SAYS, YES.
11 Q. AND I WANT TO GO THROUGH SOME OF
12 THE NUMBERS THAT ARE HERE, BUT I THINK YOU ARE
13 GOING TO SEE THAT A LOT OF THEM ARE NUMBERS THAT
14 YOU TALKED ABOUT DURING YOUR DIRECT EXAMINATION.
15 I WANT TO START WITH THIS ONE,
16 1954. THIS IS ONE OF THE ONES YOU TALKED ABOUT.
17 "ALL RESPONDENTS, 1954," DO YOU SEE
18 THAT?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Digitized by http://www.industrydocuments.ucsf.edu/docs/nnxl0001

19 A. YES, SIR.
20 Q. ABOUT IN THE MIDDLE OF THE PAGE?
21 A. YES.
22 Q. AND THE SOURCE IS THE GALLUP
23 ORGANIZATION, JUNE 12 TO 17, 1954. AND THAT'S ONE
24 OF THE POLLS THAT YOU TALKED ABOUT IN YOUR DIRECT
25 EXAMINATION?
26 A. IT IS, INDEED.
27 Q. AND THE QUESTION THAT WAS ASKED,
28 "HAVE YOU HEARD OR READ ANYTHING RECENTLY TO THE
3243
1 EFFECT THAT CIGARETTE SMOKING MAY BE A CAUSE OF
2 CANCER OF THE LUNG?"
3 AND AS YOU TESTIFIED, "YES, 90
4 PERCENT; NO, 10 PERCENT."
5 CORRECT?
6 A. THAT IS CORRECT.
7 Q. AND THAT'S A VERY, VERY HIGH
8 NUMBER, ISN'T IT?
9 A. THAT IS THE HIGHEST NUMBER OF
10 PEOPLE SAYING THAT THEY ARE AWARE OF -- THEY HAVE
11 HEARD OR READ ANYTHING RECENTLY TO THE FACT, ET
12 CETERA.
13 Q. AND THAT EVEN SATISFIES YOUR
14 CONSENSUS DEFINITION, DOESN'T IT?
15 A. A CONSENSUS OF PEOPLE THAT HAVE
16 HEARD ABOUT IT, YES.
17 Q. THAT'S WHAT I AM ASKING.
18 A. I WOULD SAY, YES, IT WOULD.
19 Q. SO 90 PERCENT OF THE PEOPLE, WAY
20 BACK IN 1954, SAID THEY HAD HEARD ABOUT IT; RIGHT?
21 A. THEY HAD HEARD, YES, EXACTLY.
22 Q. NOW, YOU FOCUSED ON THE POLLS;
23 RIGHT?
24 A. I DID.
25 Q. YOU DON'T KNOW EXACTLY WHAT IT IS
26 PEOPLE SAW OR HEARD IN JUNE OF 1954, DO YOU?
27 A. NO.
28 Q. AND YOU DON'T KNOW EXACTLY WHO THEY
3244
1 HEARD IT FROM?
2 A. NO.
3 Q. AND YOU DON'T KNOW HOW MUCH THEY
4 HEARD?
5 A. THAT'S TRUE.
6 Q. OKAY. NOW, BY THE WAY, DO YOU EVER
7 GET 100 PERCENT, WHEN YOU DO A POLLING QUESTION?
8 A. I CAN'T EVER RECALL, LET ME STRIKE
9 THAT.
10 THERE MAY HAVE BEEN A TRIVIAL
11 QUESTION WHERE WE GOT LITERALLY TO A HUNDRED
12 PERCENT. BUT CERTAINLY I HAVE SEEN THINGS ABOVE 99
13 PERCENT.
14 BUT 99 PERCENT AWARENESS OF REPORTS
15 OF SOMETHING IS HIGH, BUT NOT OUTSTANDINGLY HIGH IN
16 THE SENSE OF THERE CERTAINLY HAVE BEEN STORIES THAT
17 HAVE GOTTEN HIGH LEVELS OF ATTENTION.
18 Q. BUT IT IS PRETTY RARE TO GET A
19 HUNDRED PERCENT?
20 A. YES.
21 Q. IT IS PRETTY RARE TO GET BETWEEN 90
22 AND A HUNDRED?
23 A. THE LATTER, CERTAINLY IS RARE TO

http://legacy.library.ucsf.edu/tid/whn07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

GET TO A HUNDRED. THERE ARE A WIDE VARIETY OF NEWSPAPER STORIES OR MEDIA STORIES THAT HAVE ACHIEVED 90 OR ABOVE AWARENESS.
Q. EVERYBODY HAS HEARD ABOUT IT, PARTICULARLY NOW WHERE WE HAVE LOTS OF NEWSPAPERS,

3245

LOTS OF T.V. STATIONS, CABLE NEWS; RIGHT?
A. THERE ARE MANY, AS I SAID BEFORE.
Q. OKAY.
NOW, 90 PERCENT IN 1954, YOU DIDN'T SHOW US A CHART THAT TRACKED THIS QUESTION OVER TIME, BUT MY QUESTION TO YOU IS, IS THE HIGH RATE OF PEOPLE THAT CAN RECALL HEARING OR SEEING SOMETHING PRETTY STEADY OVER TIME?
A. I DO NOT RECALL IT DEVIATING MARKEDLY FROM THAT LEVEL OVER A PERIOD OF TIME.
Q. IN FACT, I THINK YOU SHOWED JUST ONE OTHER RESPONSE TO THIS QUESTION WHICH WAS ALL THE WAY --
A. 1999.
Q. -- IN '99 AND IT WAS STILL VERY HIGH, BUT A LITTLE BIT LOWER?
A. THAT IS CORRECT.
Q. BECAUSE BY THAT TIME THERE WASN'T, THERE WASN'T AS MUCH MEDIA ATTENTION TO THE ISSUE?
A. YES.
Q. BUT OVER TIME, OVER THAT 40-YEAR-PERIOD OR 45-YEAR-PERIOD, YOU WOULD ALWAYS GET A VERY HIGH RESPONSE TO THE QUESTION, "HAVE YOU READ OR HEARD ANYTHING"?
A. AS I SAID BEFORE, IT DID GO DOWN SOMEWHAT, BUT IT WAS ALWAYS A SUBSTANTIAL PROPORTION THAT SAID THEY HAD HEARD OR -- THAT ANSWERED THIS QUESTION IN THE AFFIRMATIVE, YES.

3246

Q. SO WE CAN AGREE THAT THE POLLING DATA SUPPORTS THE NOTION THAT PEOPLE HEARD ABOUT SMOKING AND HEALTH ALL THROUGH THIS 35-YEAR-PERIOD?
A. YES.
Q. AND AGAIN, YOU HAVEN'T STUDIED WHAT THEY HEARD?
A. CORRECT.
Q. AND YOU HAVEN'T STUDIED HOW MUCH THEY HEARD, YOU HAVEN'T STUDIED WHO THEY HEARD IT FROM?
A. MY ANSWER IS EXACTLY THE SAME AS IT WAS BEFORE.
Q. OKAY.
NOW, THIS SUMMARY, AND, OF COURSE, YOUR TESTIMONY THIS MORNING ALSO WENT BEYOND JUST WHAT YOU HAVE HEARD; RIGHT?
A. YES, INDEED.
Q. AND IT LOOKED AT WHAT PEOPLE GOT FROM IT, IN A SENSE; YES?
A. CORRECT.
OR, LET ME BACK UP. IT SHOWED OTHER ASPECTS OF THEIR PERCEPTIONS ABOUT THIS ISSUE, NOT NECESSARILY WHAT THEY HEARD, WHAT THEY GOT FROM THE MEDIA REPORTS.
Q. FAIR ENOUGH. I DON'T THINK MY QUESTION WAS ARTFULLY PHRASED.
LET'S GO BACK TO THE TOP OF THAT PAGE, "RESPONSES OF CIGARETTE SMOKERS IN THE

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

3247
1940'S." DO YOU SEE THAT?
A. YES.
Q. AND THERE ARE TWO POLL QUESTIONS THAT ARE REPORTED HERE, RESPONSES, AND THEY ARE BOTH OF RESPONDENTS OF PEOPLE WHO SMOKED CIGARETTES; RIGHT?
A. CORRECT.
Q. SO THESE ARE POLL QUESTIONS THAT WERE JUST ASKED TO SMOKERS?
A. THAT IS CORRECT.
Q. OKAY.
NOW, THE FIRST ONE, LET ME TRY TO FOCUS IN ON IT, CHALLENGING MY SKILLS WITH THIS MACHINE.
"DO YOU THINK SMOKING IS HARMFUL TO YOU?" AND THIS WAS ASKED IN 1946. AND THE "YES" RESPONSE WAS 42 PERCENT AND "NO" RESPONSE WAS 54 PERCENT; RIGHT?
A. THAT IS CORRECT.
Q. AND IF I CAN SUGGEST WHAT I THINK YOUR TESTIMONY IS, THE PROBLEM WITH THIS QUESTION IN 1946 IS YOU DON'T KNOW EXACTLY WHAT PEOPLE UNDERSTOOD THE WORD "HARMFUL" TO MEAN?
A. YES.
Q. OKAY.
AND YOU WANT, IF YOU REALLY WANTED TO PUT A LOT OF WEIGHT TO THIS QUESTION, TO TRY TO GO BACK TO 1946 AND UNDERSTAND WHAT PEOPLE THOUGHT
3248
ABOUT WHEN THEY ASSOCIATED SMOKING AND HARMFUL; RIGHT?
A. IF YOU COULD, IF YOU COULD RETROACTIVELY DO THAT, YES.
Q. IF YOU COULD DO THAT, YOU WOULD WANT TO KNOW WHAT PEOPLE IN 1946 WERE THINKING ABOUT WHEN THEY WERE THINKING, WHEN THEY WERE MAKING ASSOCIATION BETWEEN SMOKING AND HARMFUL; RIGHT?
A. YES. LET ME ANSWER IT VERY PRECISELY. I -- OFTENTIMES ONE WISHES, ESPECIALLY WHEN ONE IS DOING TRENDS OF DATA ACROSS TIME THAT MORE DETAILED QUESTIONS HAD BEEN ASKED THAT WOULD ENABLE YOU TO FLUSH OUT WHAT WAS MEANT OR WHAT A SINGLE QUESTION OR QUESTIONS MIGHT MEAN.
YES.
Q. OR IF WE WEREN'T GOING TO LIMIT OURSELVES TO POLLS, WE WOULD DO SOMETHING ELSE TO TRY TO GO BACK AND UNDERSTAND WHAT PEOPLE WERE THINKING IN 1946 WHEN THEY WERE THINKING ABOUT SMOKING AND HARMFUL, YOU WANT TO DO SOMETHING; RIGHT?
A. IF THERE WERE WAYS OF FLUSHING THAT OUT THAT WERE NOT POLL-RELATED, I CERTAINLY WOULD NOT OBJECT TO LOOKING AT THEM.
Q. OKAY. LET'S LOOK AT THE OTHER ONE.
1949, AND I THINK THIS IS ONE THAT YOU MENTIONED, "DO YOU THINK CIGARETTE SMOKING IS
3249
HARMFUL OR NOT?"
AND "YES," 52 PERCENT; "NO," 45 PERCENT. THIS IS NOVEMBER 1949.
DO YOU SEE THAT?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

A. YES, I DO.
Q. AND THAT'S THE SAME PROBLEM, ISN'T
IT, YOU DON'T KNOW IN 1949 WHAT PEOPLE MIGHT HAVE
BEEN THINKING WHEN THEY WERE ASSOCIATING SMOKING
AND HARMFUL; RIGHT?
A. YES. AND IT IS CERTAINLY NOT JUST
TIED WITHOUT FURTHER EVIDENCE TO SIMPLY ASSUME THAT
IT HAD A PARTICULAR MEANING AND MAKE LEAPS AS TO
WHAT IT WOULD IMPLY.
YOU CAN SAY THAT IF PEOPLE WOULD
HAVE APPLIED THE, OR DID, IN THIS QUESTION, APPLY
THE LABEL "HARMFUL" WITHOUT BEING ABLE TO SPECIFY
WHAT "HARMFUL" MEANS TO THEM.
Q. YOU DON'T WANT TO JUST MAKE A LEAP
OF JUDGMENT AS WHAT PEOPLE MUST HAVE MEANT OR WHAT
PEOPLE MUST HAVE BEEN THINKING WHEN THEY WERE
THINKING ABOUT "HARMFUL"?
A. THAT IS CORRECT.
Q. NOW, I THINK YOU SHOWED THE JURY A
VERSION OF A CHART LIKE THIS WHICH TRACES
ESSENTIALLY THIS QUESTION, OVER TIME.
A. YES, SIR.
Q. ALL RIGHT.
A. UH-HUH. I SPECIFICALLY RECALL
3250
MAKING REFERENCE TO THAT SUBJECT, DECEMBER, 1954.
Q. IN 1954, WE ARE FORTUNATE ENOUGH TO
HAVE BREAKDOWN QUESTIONS?
A. THAT IS CORRECT.
Q. TO WHICH PEOPLE WERE ASKED WHAT DO
YOU MEAN WHEN YOU THINK ABOUT HARMFUL?
A. INDEED.
Q. AND THAT WAS AN OPEN-ENDED QUESTION
AND PEOPLE WROTE DOWN WHATEVER IT IS THEY WERE
THINKING ABOUT; RIGHT?
A. MORE PRECISELY, THEY SAID WHATEVER
THEY WERE THINKING ABOUT AND INTERVIEWERS WROTE
DOWN OR CATEGORIZED WHAT THEY SAID.
Q. SO THESE WERE IN PERSON INTERVIEWS?
A. CORRECT.
Q. AND PEOPLE WERE ASKED WHAT DO YOU
MEAN BY HARMFUL AND THE INTERVIEWER WROTE DOWN
WHATEVER IT IS THEY SAID. AND AS YOU SAID IN YOUR
DIRECT EXAMINATION, THE ANSWERS WERE ALL OVER THE
PLACE?
A. YES, THAT IS CORRECT.
Q. AS THIS QUESTION GETS TRACED FROM
1954 TO 1990, PEOPLE MEAN THE SAME THING BY
"HARMFUL" ALL THE TIME?
A. MOST LIKELY NOT, AND THAT CAN BE
TRACED IN SEVERAL WAYS.
ONE IS THAT YOU CAN LOOK AT
PATTERNS OF OTHER QUESTIONS, NOTICING, FOR EXAMPLE,
3251
WHETHER THE PERCENTAGE WHO ANSWERS THE QUESTION
"HARMFUL" IS DIFFERENT FROM OR APPROXIMATES A
PERCENTAGE WHO ANSWERS IT AS REGARDS ASPECTS OF
WHAT "HARMFUL" MIGHT MEAN, TO TAKE ONE EXAMPLE,
THAT LUNG CANCER QUESTION.
YOU CAN ALSO, IN PRINCIPLE, LOOK AT
HOW THE INDIVIDUAL PERSONS WHO SAID "HARMFUL"
RESPONDED TO THOSE OTHER QUESTIONS.
Q. AND WOULD YOU AGREE WITH ME THAT IF

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

10 YOU ASKED SOMEBODY IN 1990 TO ASSOCIATE CIGARETTES
11 AND HARMFUL, THEY ARE MOST LIKELY GOING TO BE
12 THINKING ABOUT SOMETHING MORE SERIOUS THAN BAD
13 BREATH?
14 A. YES, I WOULD.
15 Q. I AM GOING TO INTRODUCE ANOTHER
16 TERM. THIS WILL BE MY ATTEMPT TO USE TECHNICAL
17 MATERIAL. I AM GOING TO GO PACK TO THE 1954
18 QUESTION, "HAVE YOU READ OR HEARD ANYTHING."
19 DO YOU HAVE THAT ONE IN FRONT OF
20 YOU?
21 A. YES.
22 Q. COULD THAT BE CALLED AN OBJECTIVE
23 QUESTION, WHAT DO YOU KNOW, WHAT HAVE YOU HEARD?
24 A. YES.
25 Q. DESCRIBE FOR THE JURY WHAT YOU MEAN
26 BY AN OBJECTIVE QUESTION?
27 A. WELL, IT IS ASKING PEOPLE WHETHER
28 OR NOT THEY HAVE DONE SOMETHING, WHETHER OR NOT A
3252
1 FACT AS A FACT IS TRUE. IT IS NOT ASKING THEM SO
2 MUCH WHAT THEIR PERCEPTION IS, HAVE YOU HEARD OR
3 READ. AND THEY WILL -- THEY OFTENTIMES, THEY ARE
4 INTENDED TO AND MOST OFTEN WILL ANSWER SUCH A
5 QUESTION IN TERMS OF YES, WHAT I DID OR HEARD --
6 YEAH.
7 Q. IT IS A FAIRLY STRAIGHTFORWARD KIND
8 OF QUESTION, HAVE YOU READ OR HEARD SOMETHING?
9 A. YES, THAT IS CORRECT.
10 Q. AND PEOPLE ARE GOING TO EITHER SAY
11 YES, I DID; NO, I DIDN'T, OR I DON'T KNOW, I DON'T
12 REMEMBER?
13 A. THAT'S TRUE.
14 Q. LET'S MOVE TO THE QUESTION, DO YOU
15 THINK CIGARETTE SMOKING IS ONE OF THE CAUSES OF
16 LUNG CANCER OR NOT, THAT'S A SUBJECTIVE QUESTION,
17 ISN'T IT?
18 A. YES AND NO.
19 THE REASON I SAY THAT IT IS ASKING
20 PEOPLE SUBJECTIVE BELIEF, IS IT TRUE OR NOT, BUT IT
21 IS, OF COURSE, ASKING THEM WHAT THEY BELIEVE AT THE
22 SAME TIME. AND SO WE SEE HERE IS PEOPLE'S REPORT
23 OF A BELIEF IN THE FACTICITY OR NOT OF THE
24 PROPOSITION THAT CIGARETTE SMOKING IS ONE OF THE
25 CAUSES OF LUNG CANCER.
26 IT, OF COURSE, DOESN'T SHOW WHETHER
27 IT IS OR ISN'T. IT DOESN'T, JUST ESTABLISHES
28 WHETHER THEY BELIEVE IT.
3253
1 Q. A BELIEF IN THE FACTICITY?
2 A. THAT'S A WORD THAT I USED
3 YESTERDAY.
4 Q. YES. EXPLAIN THAT.
5 A. "FACTICITY" WOULD BE WHETHER OR NOT
6 THEY BELIEVE THE ALLEGATION. ONE WAY OF LOOKING AT
7 IT, QUOTES, HERE'S AN ALLEGATION, CIGARETTE SMOKING
8 IS ONE OF THE CAUSES OF LUNG CANCER, DO YOU BELIEVE
9 THAT.
10 Q. IN FACT, YOU SEE THIS QUESTION ON
11 THE ROPER STUDY BEGINS WITH DOT, DOT, DOT, RIGHT?
12 SEE RIGHT AFTER THE WORD "QUESTION," THERE'S DOT,
13 DOT, DOT?
14 A. YES.

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

Q. SO THAT SUGGESTS TO YOU THERE THAT
THERE WAS SOMETHING BEFORE THE DOT, DOT, DOT, IN
THE ACTUAL QUESTION?
A. YES.
Q. AND I BELIEVE, AND CORRECT ME IF I
AM WRONG, THAT THIS IS THE ACTUAL QUESTION?
A. THAT IS CORRECT.
Q. SO THIS IS THE QUESTION, WHAT IS
YOUR OWN OPINION, DO YOU THINK CIGARETTE SMOKING IS
ONE OF THE CAUSES OF LUNG CANCER OR NOT; RIGHT?
A. THAT IS CORRECT.
Q. THAT'S THE QUESTION THAT GALLUP
ASKED?
A. AT VARIOUS POINTS IN TIME.

3254

Q. AND THIS LOOKS LIKE IN CHART FORM,
PRETTY MUCH THE DATA THAT YOU WERE TALKING ABOUT;
RIGHT?
A. THAT IS CORRECT. OR SOME OF THE
POINTS, NOT ALL THOSE POINTS WERE ON THE GRAPH,
BUT --
Q. ACTUALLY, WHERE THIS COMES FROM,
THE GALLUP POLL WEB SITE. YOU ARE FAMILIAR WITH
THE GALLUP POLL WEB SITE?
A. OH, VERY DEFINITELY.
Q. LAST NIGHT.
A. I AM SORRY.
Q. I PRINTED IT OUT LAST NIGHT.
A. ALL RIGHT. I VISITED BUT NOT THAT
RECENTLY.
Q. LET'S GO BACK TO THIS QUESTION.
NOW, PEOPLE ARE BEING ASKED AT
VARIOUS TIMES BETWEEN 1954 AND 1999, WHAT IS YOUR
OWN OPINION, DO YOU THINK CIGARETTE SMOKING IS ONE
OF THE CAUSES OF LUNG CANCER.
AND PEOPLE ARE ASKED, YES, NO, OR
NO OPINION --
A. CORRECT.
Q. NOW --
A. THEY ARE NOT ASKED NO OPINION, THE
QUESTION AS WRITTEN.
Q. FAIR ENOUGH. THEY ARE ASKED YES OR
NO, BUT THEY COULD SAY "I DON'T HAVE AN OPINION"?

3255

A. CORRECT.
Q. NOW, THAT'S ESSENTIALLY A BELIEF
QUESTION?
A. YES.
Q. NOW, IS IT FAIR TO SAY THAT BELIEF
QUESTIONS, LET ME STRIKE THAT. IS IT FAIR TO SAY
THAT BELIEFS EXIST ON KIND OF A CONTINUUM. YOU
HAVE USED THAT PHRASE BEFORE?
A. YES, THAT IS CORRECT.
Q. WHAT DO YOU MEAN BY THAT?
A. WELL, IT IS POSSIBLE THAT WHILE
INDIVIDUALS CAN BE ASKED DO YOU BELIEVE THIS, YES
OR NO, YOU CAN ALSO IMAGINE DISTINGUISHING HOW
STRONGLY DO YOU BELIEVE IT, ARE YOU ABSOLUTELY
CONVINCED OR DO YOU THINK IT IS PROBABLY TRUE.
THAT'S ONE OF THE REASONS WHY IT IS
IMPORTANT TO LOOK AT THE ACTUAL WORDINGS, YOU CAN
TELL -- YOU CAN TELL WHAT PERCENTAGE OF THE PEOPLE
ANSWERED YES TO THIS SPECIFIC QUESTION.

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

Q. SO EVEN THOUGH PEOPLE WERE ASKED
YES OR NO, IN REALITY, PEOPLE HAVE A RANGE OF
BELIEFS THAT GOES FROM, I AM ABSOLUTELY CERTAIN TO
ABSOLUTELY NOT, OR SOMEWHERE IN THE MIDDLE; RIGHT?
A. THAT'S PROBABLY, GENERALLY TRUE,
YES.
Q. AND WHEN PEOPLE ARE ASKED THE
QUESTION, WHAT IS YOUR OWN OPINION, DO YOU THINK
CIGARETTE SMOKING IS HARMFUL, ONE OF THE CAUSES OF
3256
LUNG CANCER, THEY HAVE TO DECIDE WHAT THEY THINK;
RIGHT? OR THEY HAVE TO REPORT WHAT THEY THINK?
A. SPECIFICALLY, THEY HAVE TO DECIDE
IF THEIR OWN LEVEL OF, TO USE YOUR TERM, CERTAINTY
IS SUFFICIENT TO PUSH THEM IN THE YES CATEGORY,
YES.
Q. AND IT'S POSSIBLE THAT SOME PEOPLE
COULD LOOK AT THIS QUESTION AND SEE IT AS ASKING,
IS THIS GOING TO HAPPEN TO ME, WILL I GET LUNG
CANCER FROM SMOKING; RIGHT?
A. IN MY EXPERIENCE, THAT'S NOT THE
WAY PEOPLE TYPICALLY ANSWER QUESTIONS, ESPECIALLY
SINCE THERE ARE CIRCUMSTANCES WHERE PEOPLE HAVE
BEEN ASKED QUESTIONS LIKE THIS. AND THEN ALSO
ASKED, DO YOU THINK, YOU, PERSONALLY, ARE MORE OR
LESS LIKELY TO GET LUNG CANCER THAN SOMEONE ELSE.
AND WE DO GET DIFFERENT ANSWERS TO
THOSE QUESTIONS, SUGGESTING VERY STRONGLY THAT THIS
IS TYPICAL, THIS IS ZEROING IN ABOUT THE BELIEF
ABOUT CIGARETTE SMOKING BEING ONE OF THE CAUSES OF
LUNG CANCER IN THE ABSTRACT.
Q. AND IT COULD BE THAT SOMEBODY IS
LOOKING AT THIS QUESTION AND WONDERING WHETHER IT
MEANS EVERYBODY WHO SMOKES GETS LUNG CANCER.
A. I DON'T REALLY THINK SO.
IF YOU ARE ASKING IS IT LITERALLY
POSSIBLE, I SUPPOSE, EVERYTHING IS LITERALLY
POSSIBLE.
3257
I THINK THE TYPICAL PERSON HAS A
BASIC UNDERSTANDING OF THE QUESTION WHETHER
SOMETHING IS A CAUSE OF SOMETHING ELSE.
THAT DOES NOT NECESSARILY MEAN THAT
EVERYBODY POSSESSING THE CHARACTERISTIC WHO IS --
PARDON ME -- THAT DOES NOT NECESSARILY MEAN THAT
EVERYONE WHO POSSESSES THE CHARACTERISTIC WOULD
NECESSARILY HAVE THE CONSEQUENCE, AND CONVERSELY,
THAT NOBODY WHO DIDN'T WOULD HAVE IT.
PEOPLE ARE LOOKING AT SOMEWHAT A
MORE GENERAL PERCEPTION, GENERALLY, INDIVIDUALS
WILL DIFFER, HOWEVER.
Q. THAT'S ACTUALLY WHERE I WANT TO GET
TO, BECAUSE WHAT YOU SAID, I THINK, IN YOUR LAST
ANSWER WAS, YOU BELIEVE THAT PEOPLE HAVE A GENERAL
UNDERSTANDING THAT SOMETHING CAUSES SOMETHING ELSE;
RIGHT?
A. YES.
Q. AND YOU BELIEVE PEOPLE THOUGHT
THAT -- PEOPLE HAD THAT GENERAL UNDERSTANDING IN
1999 WHEN 92 PERCENT SAID YES AND 6 PERCENT SAID NO
AND 2 PERCENT SAID THEY HAD NO OPINION; RIGHT?
A. UH-HUH.
Q. AND YOU ALSO BELIEVE THAT PEOPLE

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

25 HAD THAT GENERAL UNDERSTANDING OF WHAT CAUSES
26 SOMETHING ELSE IN JANUARY OF 1954; YES?
27 A. YES.
28 Q. NOW, YOU HAVEN'T GONE BEYOND THE
3258
1 POLLING DATA HERE; RIGHT?
2 A. CORRECT.
3 Q. DO YOU HAVE AN UNDERSTANDING OF
4 WHAT SCIENTISTS UNDERSTOOD "CAUSE" TO MEAN IN 1954?
5 A. IN THE ABSTRACT OF CAUSATION? YES,
6 I THINK I DO.
7 Q. WHAT'S THAT?
8 A. THE ABSTRACT OF CAUSATION WOULD BE,
9 BASICALLY, FOR MOST SCIENTISTS, I THINK, A
10 STATISTICAL SENSE, WHETHER OR NOT THE PROBABILITY
11 OF A GIVEN EVENT OCCURRING WAS SIGNIFICANTLY
12 INCREASED BY ANOTHER CIRCUMSTANCE OBTAINING AND
13 BECAUSE OF IT. SO IT IS NOT JUST A CORRELATION BUT
14 THE NOTION IS THAT IF YOU WERE TO HOLD THE
15 SITUATION CONSTANT AND CHANGE ONE FACTOR, THE
16 CHANGING THAT ONE FACTOR WOULD CHANGE THE
17 LIKELIHOOD OF THE RESULT COMING ABOUT.
18 THAT, ESSENTIALLY, IS, WHAT I THINK
19 MOST SCIENTISTS, CONCLUDING SOCIAL SCIENTISTS,
20 WOULD MEAN BY "CAUSATION." IT'S NOT THE SAME AS
21 CORRELATION.
22 Q. AND THAT WAS REALLY MY QUESTION.
23 IT'S YOUR BELIEF THAT THAT'S WHAT
24 SCIENTISTS -- I WANT TO START THAT OVER AGAIN.
25 IT IS YOUR BELIEF THAT THAT WAS A
26 SCIENTIFIC CONSENSUS, STATISTICAL APPROACH BACK IN
27 1954?
28 A. GENERALLY, YES.
3259
1 THERE IS A PHILOSOPHICAL QUESTION
2 ABOUT WHAT CAUSATION IS.
3 Q. I UNDERSTAND THAT.
4 AND IN 1954, YOU THINK THE PUBLIC
5 HAD THE SAME PERCEPTION THAT, OF CAUSE, WHEN THEY
6 ARE THINKING ABOUT SMOKING AND LUNG CANCER THAT
7 THEY HAD IN 1999?
8 A. REPEAT THE QUESTION. I AM NOT
9 CERTAIN I UNDERSTOOD IT.
10 Q. PEOPLE INTERPRETED SMOKING CAUSING
11 LUNG CANCER THE SAME IN 1954 AS THEY DID IN 1999?
12 A. I THINK THEY INTERPRETED THE WORD
13 "CAUSE" THE SAME. WHETHER THEY WOULD, IF THEY WERE
14 ASKED TO ELABORATE ON THE CAUSAL MECHANISM OR
15 SOMETHING LIKE THAT, THEY WOULDN'T NECESSARILY
16 ANSWER IT THE SAME.
17 Q. NOW, YOU HAVE USED THIS QUESTION
18 OVER TIME AS KIND OF A SUBSTITUTE OR A SURROGATE
19 FOR THE ISSUE OF WHETHER PEOPLE THINK SMOKING IS
20 DANGEROUS; RIGHT?
21 A. IN A SENSE. WHAT I HAVE USED IT IS
22 SAYING THAT FOR THE PARTICULAR RISK, FOR A VARIETY
23 OF REASONS, INCLUDING THE FACT THAT THE MOST
24 PROMINENT ALLEGED HEALTH LINK IS LUNG CANCER. THIS
25 IS A VERY GOOD QUESTION TO USE. IT'S NOT
26 SYNONYMOUS WITH DANGEROUS, NECESSARILY.
27 Q. WOULD YOU AGREE WITH ME THAT THERE
28 ARE PEOPLE WHO MIGHT NOT UNDERSTAND THAT SMOKING
3260

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

1 CAUSES LUNG CANCER BUT REALIZE THAT IT IS A
2 DANGEROUS THING TO DO?
3 A. PROBABLY.
4 Q. OR THAT IT IS A RISKY THING TO DO?
5 A. YES.
6 Q. NOW, I WANT TO SHOW US JUST A
7 COUPLE MORE POLLS, AND I AM FAIRLY CHOSE TO BEING
8 DONE.
9 IN YOUR DIRECT EXAMINATION, YOU
10 WERE ASKED ABOUT A SCHOLASTIC STUDIES POLL, 1961?
11 A. '60, I BELIEVE. I COULD BE
12 INCORRECT BUT I BELIEVE IT WAS '60, THE SENIOR
13 SCHOLASTIC STUDY.
14 Q. LET ME SHOW YOU.
15 A. OKAY, THIS IS NOT -- I DON'T
16 BELIEVE THIS IS THE ONE I WAS SPEAKING ABOUT. I
17 HAVE NOT READ THIS. I WOULD HAVE TO READ IT.
18 Q. OKAY. I WILL TAKE IT BACK THEN.
19 IF YOU HAVEN'T READ IT, I AM NOT
20 GOING TO QUESTION YOU ABOUT IT.
21 BUT I DO WANT TO SHOW YOU ANOTHER
22 GALLUP POLL. DO YOU RECOGNIZE THIS PUBLICATION?
23 A. YES, I DO.
24 Q. WHAT IS IT?
25 A. IT IS SOMETHING WHICH HAS BEEN PUT
26 OUT BY THE GALLUP ORGANIZATION, FROM TIME TO TIME.
27 THE AUTHOR, GEORGE H. GALLUP, IS ONE OF THE
28 FOUNDERS OF THE ORGANIZATION AND ONE OF THE THREE
3261
1 LEADING FOUNDERS OF SCIENTIFIC SURVEY RESEARCH IN
2 THIS COUNTRY, THIS IS A COMPENDIUM OF GALLUP
3 RESULTS, IF YOU WILL.
4 Q. IT IS KIND OF AN ELECTION OF
5 DIFFERENT POLL QUESTIONS THAT WERE ASKED OVER TIME?
6 A. YES.
7 IT IS NOT EXHAUSTIVE BUT IT DOES
8 INCLUDE MANY QUESTIONS.
9 Q. I UNDERSTAND. AND THIS IS ACTUALLY
10 ANOTHER VERSION OF THE QUESTION WE WERE TALKING
11 ABOUT A FEW MINUTES AGO.
12 AN INTERVIEW DATE, LOOKING AT THE
13 TOP OF THE PART THAT'S HIGHLIGHTED THERE, JULY 24
14 TO 29, 1969?
15 A. UH-HUH.
16 Q. AND THIS IS THE QUESTION YOU WERE
17 TALKING ABOUT, ALL PERSONS IN THE SURVEY WERE THEN
18 ASKED WHAT IS YOUR OPINION, DO YOU THINK CIGARETTE
19 SMOKING IS OR IS NOT ONE OF THE CAUSES OF CANCER OF
20 THE LUNG, AND BY THEN, YOU GET, "IS," 71 PERCENT,
21 "IS NOT," 11, AND "NO OPINION," 18.
22 DO YOU SEE THAT?
23 A. YES, I DO.
24 Q. I WANT TO SHOW YOU THE ONE, I
25 THOUGHT IT WAS INTERESTING, 1969, I WANT YOU TO
26 ASSUME THAT MR. BOEKEN WAS ABOUT 25 YEARS OLD, HE
27 IS AGE CATEGORY, IF HIS IS 81, "IS" IS 81 PERCENT,
28 "IS NOT" IS 7 PERCENT AND "NO OPINION" IS 12
3262
1 PERCENT.
2 DO YOU SEE THAT?
3 A. THAT'S WHAT IT SAYS.
4 Q. DO YOU HAVE ANY REASON TO BELIEVE
5 THAT'S NOT ACCURATE?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

A. NO. I DON'T BELIEVE THERE IS ANY WAY TO EXTRAPOLATE FROM THAT QUESTION WHAT WAS OR WAS NOT ON MR. BOEKEN'S MIND.
Q. YOU ARE NOT HERE TO OFFER AN OPINION ON WHAT MR. BOEKEN WAS THINKING?
A. I AM NOT.
Q. WHAT HE HAD HEARD OR SEEN?
A. NO.
Q. WHAT HE BELIEVED?
A. I HAVE NEVER MAINTAINED THAT.
Q. WHY HE MADE THE CHOICES HE MADE?
A. AS I SAID BEFORE.
Q. OKAY. 1970, ARE YOU FAMILIAR WITH THIS?
A. I CAN'T TELL YOU.
Q. ARE YOU FAMILIAR WITH THIS?
A. YES, I HAVE SEEN IT.
Q. OKAY. FROM THE U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE.
A. THAT IS CORRECT.
Q. ADULT USE OF TOBACCO DATED 1970?
A. YES, THAT'S ONE OF A SERIES OF SURVEYS THAT WAS DONE AT THE BEHEST AND SPONSORSHIP

3263

OF ORIGINALLY, H.E.W. AND DEPARTMENT OF HEALTH AND HUMAN SERVICES.
Q. THEY WERE CONDUCTING POLLS THEMSELVES FROM TIME TO TIME?
A. THAT IS CORRECT.
Q. THIS IS A REPORT FROM 1970, ARE YOU FAMILIAR WITH IT?
A. YES.
Q. THIS IS PAGE 11, THE VAST MAJORITY OF RESPONDENTS AGREE THAT CIGARETTE SMOKING IS HARMFUL TO HEALTH, 87 PERCENT, AND THAT IT FREQUENTLY CAUSES DISEASE AND DEATH, 76 PERCENT. IS THAT RIGHT?
A. YES. THAT'S WHAT IT SAYS, AND I HAVE NO REASON TO DOUBT IT.
Q. NO REASON TO DOUBT IT. OKAY. AND THEN IT SAYS, AS YOU SAID, THAT FEWER SMOKERS AGREE THAN NEVER SMOKERS AND FORMER SMOKERS; RIGHT?
A. THAT IS CORRECT.
Q. AND ABOUT --
A. A PATTERN WHICH OBTAINS ACROSS MANY SURVEYS.
Q. HOW ABOUT 86 PERCENT OF THE 1970 RESPONDENTS AGREE THAT CIGARETTE SMOKE IS ENOUGH OF A HEALTH HAZARD FOR SOMETHING TO BE DONE ABOUT IT AS OPPOSED TO ONLY 76 PERCENT -- 76 PERCENT EACH OF THE 1964 AND 1966 RESPONDENTS. DO YOU SEE THAT?

3264

A. YES. I DON'T RECALL THE ACTUAL QUESTION RECORDING ON THAT. AND THAT WOULD HAVE A LOT TO DO WITH HOW YOU INTERPRET THAT NUMBER, WHEN YOU SAW SOMETHING BEING DONE ABOUT IT. SPEAKING FROM MEMORY, THERE WERE VARIOUS QUESTIONS AT VARIOUS TIMES THAT ASKED WHETHER OR NOT PEOPLE WOULD FAVOR THINGS LIKE WARNING LABELS, WHETHER PEOPLE FAVORED EDUCATION, ET CETERA, ALL OF THOSE GONE TO A GENERAL PUBLIC POLICY PREFERENCE, THEY DO NOT NECESSARILY RELATE

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

TO WHAT PEOPLE, IN GENERAL, PERCEIVED OF AS RISK IN THE ABSTRACT, AND ESPECIALLY THEY DO NOT GO TO WHETHER OR NOT THE TYPICAL SMOKER WOULD PERCEIVE THEMSELVES AS BEING EXPOSED TO THOSE RISKS.
Q. YOU ARE NOT SUGGESTING THAT PEOPLE'S BELIEF IN 1970 WAS THAT THE GOVERNMENT SHOULD BE HANDING OUT BREATH MINTS?
A. I DIDN'T SAY THAT. WHAT I AM SAYING IS IT WOULD DEPEND VERY MUCH ON WHAT THE PARTICULAR QUESTIONS, VARIOUS PARTICULAR MEASURES GOT VERY DIFFERENT RESULTS. THERE CERTAINLY WAS BACKING FOR THINGS LIKE WARNING LABELS.
Q. OKAY. NOW, YOU ALSO TALKED A LITTLE BIT TOWARD THE END OF YOUR TESTIMONY ABOUT POSITIONS TAKEN BY THE TOBACCO INDUSTRY; IS THAT RIGHT?
A. YES, I DID.
Q. AND I BELIEVE YOU SAID, AND I WANT

3265

TO CHECK MY NOTES, CORRECT ME IF I WROTE IT DOWN INACCURATELY, THAT THE PUBLIC WAS AMENABLE TO POSITIONS ESPOUSED BY INDUSTRY; IS THAT RIGHT?
A. I DON'T REMEMBER THE EXACT WORDING. I CERTAINLY INTENDED TO SAY IS THAT THERE WAS EVIDENCE FROM THE SURVEY DATA THAT THE PUBLIC WAS OPEN TO MANY OF THE ARGUMENTS THAT WERE BEING MADE BY THE TOBACCO COMPANIES ABOUT RISK NOT BEING APPROVED, ABOUT WHETHER OR NOT THERE WAS A RISK FROM SMOKING JUST ITSELF OR WHETHER OR NOT IT WAS, HAD TO DO WITH THE AMOUNT ONE SMOKES, WHETHER OR NOT YOU HAD TO SMOKE A LONG TIME FOR RISK TO BE ACHIEVED, HOW IT FIT INTO A PATTERN OF OTHER RISK, ET CETERA.
Q. THAT'S MY QUESTION. PEOPLE WERE OPEN TO POSITIONS BEING TAKEN BY THE TOBACCO INDUSTRY, IS THAT WHAT YOU ARE SAYING?
A. YES.
Q. AND YOU ALSO SAID, I BELIEVE, THAT YOUR POLLS INDICATE THAT PEOPLE'S VIEWS OF THE GOVERNMENT WENT UP AND DOWN OVER TIME; IS THAT RIGHT?
A. YES, THE POLLS, NOT NECESSARILY MY POLLS.
Q. THE POLLS, I AM SORRY. YOUR POLLS ASKED SPECIFICALLY ABOUT THE SURGEON GENERAL?
A. THERE WERE SURVEYS ASKING ABOUT THE

3266

CREDIBILITY OF VARIOUS SPOKESPERSONS ON THE TOBACCO ISSUE AND WHETHER OR NOT PEOPLE APPROVED OF THE SURGEON GENERAL'S RESPONSE. I DON'T IMMEDIATELY REMEMBER WHAT THOSE NUMBERS WERE, BUT THERE WERE QUESTIONS ON THAT.
Q. BUT YOU DON'T HAVE A SENSE THAT THE SURGEON GENERAL'S POPULARITY WENT DOWN WITH VIETNAM AND DOWN WITH WATERGATE?
A. ACTUALLY, THERE IS A SENSE IN WHICH PARTICULAR GOVERNMENTAL ACTORS' OWN, I HAVE TO LOOK AT ALL THE INDIVIDUAL DATA, BUT TYPICALLY WHAT HAPPENS, AND I THINK IT HAPPENED IN THIS CASE AS WELL, WAS THAT A COMPONENT OF PEOPLE'S PERCEPTION OF PARTICULAR GOVERNMENTAL ACTORS COMES FROM THEIR VIEW OF THAT PARTICULAR GOVERNMENTAL ACTOR AND

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

16 ANOTHER PART OF IT COMES FROM A GENERAL PERCEPTION
17 OF GOVERNMENT.
18 SO THAT THIS WAS CLEARLY THE
19 SURGEON GENERAL WAS NOT BEING VIEWED AS A
20 SPOKESPERSONS FOR THE PENTAGON, BUT THAT, OVERALL,
21 REACTION TO GOVERNMENTAL STATEMENTS WOULD BE
22 AFFECTED BY THAT.
23 Q. DO PEOPLE'S VIEW OF THE AMERICAN
24 CANCER SOCIETY FLUCTUATE IN THE SAME WAY?
25 A. I DO NOT RECALL SEEING EVIDENCE OF
26 THAT, DIDN'T FOCUS ON LOOKING AT THAT.
27 Q. AMERICAN HEART ASSOCIATION?
28 A. DITTO.
3267
1 Q. OTHER PUBLIC HEALTH ORGANIZATIONS?
2 A. NON-GOVERNMENTAL ONES, NO.
3 Q. SMOKING EFFORTS, PEOPLE'S VIEWS OF
4 THAT GO DOWN?
5 A. I DIDN'T HEAR THAT.
6 Q. LOCAL ANTI-SMOKING ORGANIZATIONS?
7 A. I DO NOT RECALL A CLEAR PATTERN ON
8 THAT.
9 Q. NOW, DURING THIS PERIOD, THE LATE
10 '60'S AND, AGAIN, I KNOW YOU ARE FOCUSED ON POLLS,
11 BUT THE LAY '60'S, VIETNAM, STUDENT PROTESTS, KENT
12 STATE; RIGHT?
13 A. INDEED.
14 Q. CIVIL RIGHTS MOVEMENT?
15 A. INDEED.
16 Q. BEGINNING WITH THE WOMEN'S RIGHT
17 MOVEMENT?
18 A. I WOULD PUT IT SOMEWHAT EARLIER
19 THAN THAT, BUT I WILL TAKE YOUR POINT.
20 Q. PEOPLE'S VIEWS OF BIG CORPORATIONS
21 GO UP DURING THAT PERIOD?
22 A. PEOPLE'S TRUST OF VARIOUS
23 INSTITUTIONS MOVED UP AND DOWN DEPENDING, THERE'S
24 BEEN IN VERY LONG STRENGTH ON CONFIDENCE ON VARIOUS
25 INSTITUTIONS INCLUDING VERY ABSTRACT INSTITUTIONS
26 AND SOME OF THEM MORE SPECIFIC INSTITUTIONS.
27 Q. LET ME GET RIGHT TO THE POINT THEN.
28 BY 1970, WAS THE PUBLIC'S
3268
1 PERCEPTION OF THE TOBACCO COMPANIES VERY FAVORABLE?
2 A. IT DEPENDS ON THE ASPECTS OF IT YOU
3 ARE LOOKING AT.
4 THAT BY THE 1970'S THERE WAS A
5 PARTICULAR QUESTION THAT I CAN RECALL ASKING PEOPLE
6 WHETHER THEY HAD A FAVORABLE OR UNFAVORABLE OPINION
7 OF THE WAY THE TOBACCO COMPANIES HAD HANDLED THE
8 CONTROVERSY ABOUT CIGARETTE SMOKING, THAT'S NOT THE
9 EXACT WORDING, WHICH FOUND OPINION TO BE RELATIVELY
10 SPLIT.
11 IT ALSO FOUND OPINIONS, I BELIEVE
12 THIS WAS 1971 OR '72 SURVEY, I AM THINKING OF,
13 SHOWED CIGARETTE SMOKERS HAVING A FAVORABLE
14 IMPRESSION OF THE TOBACCO COMPANIES' RESPONSE BY, I
15 BELIEVE IT WAS AROUND A 51 TO 37 PERCENT MARGIN. I
16 EMPHASIZE -- THAT COULD BE OFF, ABSOLUTELY, MY
17 MEMORY.
18 Q. LET ME TRY TO REFRESH YOUR MEMORY.
19 ONE OF THE OTHER CASES THAT YOU WERE INVOLVED IN IN
20 THE TOBACCO LITIGATION WAS THE WHITELEY CASE?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

A. THAT IS CORRECT.
Q. YOU HAD YOUR DEPOSITION TAKEN IN
THE WHITELEY CASE?
A. THAT IS CORRECT.
Q. ONE OF THE DAYS OF YOUR DEPOSITION
WAS JANUARY 8, 2000?
A. I BELIEVE THAT'S TRUE.
Q. SO A LITTLE MORE THAN A YEAR AGO?
3269
A. UH-HUH.
Q. AND YOU WERE ASKED, AND IN FACT,
THIS IS A QUESTION:
"TOBACCO COMPANIES ARE HELD
IN LOWEST STEAM?"
"A THAT HAS CHANGED
OVER TIME.
"Q CORRECT. AS OF
1970, THAT'S WHAT WE WERE TALKING
ABOUT A MINUTE AGO, RIGHT, AS OF 1970,
THIS IS THE QUESTION, TOBACCO
COMPANIES WERE HELD IN LOWER ESTEEM
THAN THE PUBLIC HEALTH AUTHORITIES AND
PEOPLE'S PERSONAL PHYSICIANS, ISN'T
THAT TRUE?
"A I BELIEVE THAT IS
THE CASE."
IS THAT WHAT YOU SAID?
A. I BELIEVE THAT IS THE CASE, YES.
MR. LEITER: I DON'T HAVE ANY FURTHER
QUESTIONS.
MR. PIUZE: CAN I HAVE THAT PART.
THE COURT: REDIRECT.
MR. PIUZE: YES, SIR.
/// /// ///
/// /// ///
/// /// ///
/// /// ///
3270
REDIRECT EXAMINATION

BY MR. PIUZE:
Q. YOU MADE THE FRONT PAGE OF THE
PAPER?
A. YES. RELATIVELY FREQUENTLY.
Q. RELATIVELY FREQUENTLY?
A. YES. I DID DIRECT A SURVEY IN THE
STATE OF CONNECTICUT FOR SOME 20 YEARS.
Q. NOT TO TAKE ANY STEAM, WIND OUT OF
YOUR SAILS, BUT HARTFORD ISN'T EXACTLY AS BIG AS
L.A.
A. THAT IS TRUE. HARTFORD IS THE
BIGGEST CITY -- ONE OF THE BIGGEST CITIES IN A
SMALL STATE, BUT YOU ARE QUITE CORRECT.
Q. AND HARTFORD IS THE CAPITAL CITY OF
CONNECTICUT?
A. IT IS, INDEED.
Q. SO ANYWAY, WERE YOU SHOWN THIS?
A. PARDON ME, YES.
Q. WHAT ABOUT THIS, WHAT, IF ANYTHING,
DOES THIS HAVE TO DO WITH YOUR OPINIONS HERE?
A. I DON'T SEE IT HAS ANYTHING TO DO
WITH IT. I WAS ASKED SPECIFICALLY WHETHER I HAD
USED PARTICULAR WORDS TO CHARACTERIZE RESULTS. I

http://legacy.library.ucsf.edu/tid/whp07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

HAD SAID, YES. I DID SAY IT WAS NONETHELESS A TRULY REMARKABLE RESPONSE IN AN EARLIER QUESTION ADDRESSED TO ME BY THE DEFENDANT'S ATTORNEY. I HAD

3271

SAID THAT TRULY REMARKABLE HAD NOTHING TO DO WITH CONSENSUS. IT HAD TO DO WITH WHETHER SOMETHING WAS REMARKABLE AND I CAN IMAGINE A SITUATION WHERE 30 PERCENT OF SOMETHING WAS TRULY REMARKABLY HIGH.

Q. PLEASE SLOW DOWN.

I THINK IT WOULD BE TRULY REMARKABLE IF YOU SLOW DOWN.

PLEASE.

A. I -- AND AS I SAID, IT'S TRUE THAT I COULD IMAGINE A CIRCUMSTANCE IN WHICH 30 PERCENT WAS TRULY REMARKABLY HIGH. IF YOU ASKED PEOPLE ABOUT SOME THINGS, AND I COULD IMAGINE A CIRCUMSTANCE IN WHICH 95 PERCENT WAS TRULY REMARKABLY LOW.

SO TRULY REMARKABLE HAS TO DO WITH CONSENSUS AT ALL. IT HAS TO DO WITH WHETHER OR NOT A FINDING IS PARTICULARLY NOTEWORTHY ONE WAY OR THE OTHER.

Q. SO IF YOU TOOK A SURVEY OF PEOPLE AND THE QUESTION WAS, WILL THE SUN RISE IN THE EAST TOMORROW, AND YOU GOT 95 OR 99 OR 99.9 PERCENT OF THE PEOPLE THAT AGREED THE SUN IS GOING TO RISE IN THE EAST TOMORROW JUST LIKE IT HAS FOR THE LAST HOW MANY YEARS, I GUESS THAT WOULDN'T BE TRULY REMARKABLE?

A. ONLY THAT IT WAS SO LOW AS 90 PERCENT. AND IF I FOUND 42 PERCENT OF THE PEOPLE SAYING THEY HAD BEEN ON A UFO, I WOULD CONSIDER

3272

THAT TRULY REMARKABLE.

Q. OKAY.

ANYWAY, JUST TO TAKE A MINUTE OR TWO FOR THIS, EXCUSE ME FOR BLOCKING, FOR THIS PARTICULAR POLL HERE, WHAT WAS TRULY REMARKABLE?

A. FIRST OF ALL, THIS WAS AN OPEN-ENDED QUESTION, ASKING PEOPLE WHAT THE MOST IMPORTANT PROBLEM FACING THE COUNTRY WAS. AND IT IS UNUSUAL WHEN OPEN ENDED QUESTIONS OF THIS SORT ARE ASKED, WITHOUT ANY PROMPTING AT ALL, FOR A PARTICULAR ISSUE TO EMERGE AS HIGH AS DRUGS EMERGE ON THIS PARTICULAR SURVEY. THAT'S WHAT'S TRULY REMARKABLE.

SINGLE-MINDEDNESS CONTEXT REFERRED TO THE FACT THAT IT WAS A CLEAR POSITION. IT WAS NOT, IT DID NOT EITHER SAY OR IMPLY THAT IT WAS UNIVERSALLY HELD MERELY THAT IT WAS VERY UNUSUAL FOR A SINGLE TOPIC TO HAVE SUCH A LARGE MAJORITY IN THIS OPEN-ENDED QUESTION. SO THE CONTEXT IS EXTREMELY IMPORTANT.

Q. SO ANYWAY, NOW THAT WE HAVE HAD A CHANCE TO LOOK AT THE FRONT PAGE OF THE "HEARTFORD CURRENT" FROM SEPTEMBER 1989, DO YOU THINK THAT'S GOT ANYTHING TO DO WITH YOUR TESTIMONY HERE?

A. NOTHING WHATSOEVER.

Q. JUST A COUPLE MORE AREAS. THIS GALLUP COMPENDIUM THAT YOU WERE SHOWN A BIT OF, THE DIFFERENCE IN ANSWERS BETWEEN SMOKERS AND NON-

3273

SMOKERS WAS A REAL DIFFERENCE?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Digitized by http://www.industrydocuments.ucsf.edu/docs/nnxl0001

A. OH, YES.
Q. WAS IT NOT?
A. IT WAS.
Q. I DON'T HAVE IT, I AM NOT GOING TO DRAG IT OUT. IT'S TOO CLOSE TO NOON TO DO THAT, BUT WHAT, FROM MEMORY, DO YOU KNOW WHAT THE DIFFERENCE WAS?
A. THEY ARE ON THE ORDER OF 20 PERCENTAGE DIFFERENCE BETWEEN SMOKERS AND NON-SMOKERS.
Q. SO HOW SOMEONE SEES SMOKING SORT OF DEPENDS ON WHETHER OR NOT ONE IS ADDICTED TO NICOTINE, WOULD YOU AGREE WITH THAT?
MR. LEITER: OBJECTION, FOUNDATION.
MR. PIUZE: I WILL TAKE IT BACK.
THE COURT: YOU GOT TO HAVE SURVEY FOUNDATION.
Q BY MR. PIUZE: HOW SOMEONE VIEWS SMOKING SORT OF DEPENDS, TO A GREAT EXTENT, ON WHETHER OR NOT ONE SMOKES?
A. YES.
Q. HAS THAT BEEN TRUE FROM DAY 1?
A. IT HAS BEEN. THE DEGREE TO WHICH, ON SOME QUESTIONS, THE DIFFERENCE HAS EXISTED HAS SHIFTED ACROSS TIME, IT HAS GOTTEN SMALLER AS TIME GETS LATER. AS YOU MAY RECALL, I SAID ORIGINALLY IT WAS 20 POINTS, AND ON SOME QUESTIONS IT

3274

VIRTUALLY DISAPPEARED BY THE LATE 1990'S.
Q. HERE'S MY LAST AREA. YOU WERE DISCUSSING A 1970 SURVEY THAT YOU ARE REMEMBERING, IT'S NOT IN FRONT OF YOU, BUT YOU ARE REMEMBERING IT, AND I GUESS THE QUESTION, STILL US, THE TOPIC WAS TOBACCO COMPANIES' RESPONSE TO THE HANDLING OF THE, AND I GOT IN QUOTES, CONTROVERSY, CLOSE QUOTES.
A. YES.
Q. THAT'S WHAT I WROTE DOWN. BUT FORGET MY NOTES. WHAT DID YOU SAY, WHAT WAS, AS YOU REMEMBER IT, WHAT WAS THE QUESTION?
A. THE QUESTION ASKED PEOPLE WHETHER THEY HAD A FAVORABLE OR UNFAVORABLE IMPRESSION OF THE WAY THE TOBACCO COMPANIES HAD RESPONDED AND I BELIEVE THE WORD "CONTROVERSY" WAS USED, ABOUT SMOKING AND HEALTH.
Q. SO LET'S STOP FOR A SECOND. WHO DECIDED TO USE THE WORD "CONTROVERSY"?
A. IN THAT CASE, THE PARTICULAR QUESTION I AM REFERRING TO WAS A ROPER ORGANIZATION QUESTION. IT WAS ON ONE OF THE SPONSORED SURVEYS FOR THE TOBACCO INDUSTRY.
AND I DON'T KNOW FOR A FACT WHETHER SOMEONE IN THE INDUSTRY SUGGESTED THAT WORDING TO THE ORGANIZATION OR THEY SUGGESTED IT.

3275

CERTAINLY THEY APPROVED OF IT.
Q. REGARDLESS OF WHETHER THE TOBACCO INDUSTRY SUGGESTED THE WORD "CONTROVERSY" OR APPROVED THE WORD "CONTROVERSY," YOU WERE AROUND IN 1970?
A. YES.

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

Q. WHAT WAS THE CONTROVERSY?
MR. LEITER: OBJECTION, HE IS NOT A FACT WITNESS.
THE COURT: WELL, WHAT WAS THE CONTROVERSY, AS YOU UNDERSTAND IT?
MR. PIUZE: I UNDERSTAND.
THE COURT: ADDRESSED BY SURVEY.
MR. PIUZE: LET ME WITHDRAW THE QUESTION, I MESSED IT UP.
Q BY MR. PIUZE: FORGET ABOUT WHETHER OR NOT YOU WERE AROUND. OKAY?
A. YES.
Q. JUST BASED ON THE FACT THAT YOU ARE A POLLSTER AND YOU HAVE BEEN LOOKING AT THIS STUFF HISTORICALLY, WHAT WAS THE CONTROVERSY IN 1970, WHAT WAS THE CONTROVERSY?
A. I SUSPECT THAT THE WORD WOULD BE INSERTED FOR TWO REASONS.
MR. LEITER: OBJECTION, HE IS SPECULATING AS TO INTENT.
THE COURT: YOUR UNDERSTANDING OF THE SURVEY, NOT -- YOU CAN'T -- OKAY, I AM NOT GOING TO

3276

GET INTO THIS. BUT DON'T TELL US WHAT YOU THINK SOMEBODY ELSE THOUGHT. YOU TELL US WHAT YOU THINK THE SURVEY DID OR SAID.
MR. PIUZE: YOUR HONOR, CAN I DO THE QUESTION AGAIN.
THE WITNESS: YOU CAN.
MR. PIUZE: TO MAKE IT CLEANER.
Q BY MR. PIUZE: I DON'T WANT TO KNOW WHY THEY PUT IT UP. YOU DON'T HAVE TO GET INTO THEIR MINDS. I AGREE TOTALLY WITH THE COURT. WHAT WAS THE CONTROVERSY?
A. ARE CIGARETTES DANGEROUS TO PEOPLE'S HEALTH AND WHAT OUGHT TO BE DONE ABOUT IT, IF ANYTHING.
Q. BOTH A FACTUAL QUESTION AND WHAT THE CONSEQUENCE OUGHT TO HAVE BEEN, WHAT DOES THE WORD "CONTROVERSY --"
A. IT IMPLIES CERTAINLY THAT, FIRST OF ALL, SOMETHING IS IN DISPUTE AND THAT'S A VERY INTERESTING WORD THERE, BECAUSE ONE OF THE THINGS IT AVOIDS HAVING A QUESTION THAT WOULD STATE, HAVE TO SAY WHAT DO YOU THINK THE CIGARETTE COMPANIES HAVE DONE ABOUT THE HEALTH RISKS OF TOBACCO, SMOKING, SAY, OR WHAT DO YOU THINK ABOUT THE CIGARETTE COMPANY'S REACTION TO GOVERNMENT PROPOSALS. IT EMPHASIZES THAT THERE IS A CONTROVERSY, WHICH, ITSELF, WAS PART OF THE TOBACCO COMPANY'S ARGUMENT THAT EVERYTHING WAS SEEN AS

3277

BEING IN DISPUTE, THAT THEY CERTAINLY CONCEDED THAT SOME PEOPLE MAINTAINED THERE WAS A REAL HEALTH RISK BUT THEY MAINTAINED REPEATEDLY THAT WAS A MATTER OF GREAT DISPUTE ALSO NOT SETTLED. SO CONTROVERSY SEE WOULD CERTAINLY PLAY INTO THAT.
Q. WELL, EVERYONE IN THE WORLD KNEW THAT TOBACCO WAS A HEALTH RISK, IT WOULD KILL YOU DEAD, BECAUSE --
MR. LEITER: OBJECTION, ARGUMENTATIVE.
THE COURT: SUSTAINED.
Q BY MR. PIUZE: WELL --

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

THE COURT: NO, NO, NO, WHEN YOU HEAR ME
STAY "SUSTAINED," THAT'S WHEN IT STOPS.
Q BY MR. PIUZE: WHO WAS ON THE SIDE
OF THE CONTROVERSY THAT SAID, WE DON'T KNOW IF
CIGARETTE SMOKING IS BAD FOR YOU, WE DON'T KNOW IF
CIGARETTE SMOKING CAUSES LUNG CANCER, WE DON'T KNOW
IF CIGARETTE SMOKING CAUSES HEART DISEASE, WE NEED
MORE RESEARCH, AND WE NEED MORE TIME TO FIGURE IT
OUT, WHO WAS ON THAT SIDE OF THE CONTROVERSY?
MR. LEITER: ARGUMENTATIVE AND
FOUNDATION.
THE COURT: AS YOU UNDERSTAND THE
CONTROVERSY AND AS YOU USED THE WORD IN YOUR
TESTIMONY, YOU MAY ANSWER THE QUESTION.
THE WITNESS: THE TOBACCO INDUSTRY.
Q BY MR. PIUZE: NOW, WE ARE PAST
CONTROVERSY, FROM YOUR RECOLLECTION OF THIS '70 --
3278
THIS IS A PRIVATE POLL; RIGHT?
A. CORRECT.
Q. FROM YOUR RECOLLECTION OF THE '70
PRIVATE POLL, FORGET THE DIFFERENCE BETWEEN SMOKERS
AND NON-SMOKERS, LET'S JUST TAKE EVERYBODY, HOW DID
IT COME DOWN?
A. THE BALANCE, FIRST OF ALL, THE
OPINION WAS SPLIT. IT WAS NOT VERY ONE-SIDEDLY ONE
WAY OR THE OTHER, EITHER FAVORABLY -- FAVORABLE OR
UNFAVORABLE. AND YOU SAID IGNORING SMOKERS, WHAT I
WAS GOING TO SAY IS THAT IT'S ESPECIALLY, I THINK,
NOTEWORTHY THAT SMOKERS, ON BALANCE, HAD A POSITIVE
VIEW OF WHAT THE ACTORS WERE ARGUING AGAINST
PERCEIVED RISK WERE SAYING.
Q. I WAS GOING TO GET THERE. BUT I
HAVE TO DO IT IN STAGES. OKAY.
LET'S FORGET THE DIFFERENCE BETWEEN
SMOKERS AND NON-SMOKERS. HERS'S JUST A WHOLE GROUP
OF PEOPLE THAT WERE ASKED THAT QUESTION.
A. THE OPINION WAS DIVIDED.
Q. WHEN YOU SAY -- WELL, I AM SURE IT
WAS. IS THAT 99 TO 1 OR WAS IT 49 TO 51 OR WHAT
WAS IT?
A. IT WAS APPROXIMATELY EVENLY
DIVIDED, APPROXIMATELY EVENLY DIVIDED.
Q. OKAY. ABOUT WHETHER OR NOT THE
CIGARETTE COMPANIES WERE PROPERLY HANDLING THE
CONTROVERSY?
3279
A. PARTICULARLY WHETHER THE IMPRESSION
THAT PEOPLE HAD OF WHAT THEY WERE DOING WAS
FAVORABLE OR UNFAVORABLE, WHICH COMES TO
ESSENTIALLY THE SAME THING.
Q. I DON'T WANT TO MISQUOTES IT. JUST
TELL US THE QUESTION.
A. THE QUESTION WAS ASKING WHETHER
PEOPLE HAD A FAVORABLE OR UNFAVORABLE VIEW OF THE
WAY THE TOBACCO COMPANIES WERE HANDLING, AND THEN
THE REST OF IT, THE CONTROVERSY, AND THAT OPINION
WAS DIVIDED IN A ROUGH BALANCE BETWEEN FAVORABLE
AND UNFAVORABLE.
Q. IN 1970?
A. CORRECT.
Q. AND BECAUSE YOU WERE ASKED SOME
QUESTIONS ABOUT THE VIETNAM WAR, ET CETERA, THAT

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

17 WAS SMACK IN THE MIDDLE OF THE VIETNAM WAR?
18 A. IT WAS. 1970 WAS EXACTLY THE YEAR
19 OF KENT STATE, CAMBODIAN INCURSION AND IN MANY WAYS
20 THE HEIGHT OF THE VIETNAM WAR, SPLIT IN THIS
21 COUNTRY.
22 Q. AND SO NOW, LET'S GO TO PEOPLE WHO
23 HAPPEN TO SMOKE.
24 IN 1970, THIS ISN'T RICHARD BOEKEN,
25 IT IS EVERYONE SUPPOSEDLY WHO SMOKED?
26 A. CORRECT.
27 Q. WHEN EVERYONE WHO SMOKED WAS ASKED
28 WHAT DO YOU THINK ABOUT THE TOBACCO INDUSTRY'S
3280
1 HANDLING OF THE RESPONSE OR HANDLING WHATEVER TO
2 THE CONTROVERSY, WHAT WERE THE RESULTS?
3 A. ROUGHLY A THREE TO TWO MARGIN,
4 SMOKERS HAD A FAVORABLE IMPRESSION OF THE TOBACCO
5 COMPANIES' HANDLING.
6 Q. SO 1970, 60 PERCENT OF THE SMOKERS
7 IN THE U.S. OF A. FELT THE TOBACCO COMPANIES'
8 RESPONSE TO THE HEALTH CONTROVERSY WAS JUST FINE?
9 A. AMONG THOSE WITH AN OPINION, YES,
10 THAT'S THREE TO TWO. I THINK IT WAS ACTUALLY 51 TO
11 37, 3 TO 2.
12 Q. WHEN, IF -- WHEN, WHEN IS THE LAST
13 TIME YOU CAN REMEMBER THE WORD "CONTROVERSY" BEING
14 USED IN ONE OF THESE POLLS?
15 A. SPEAKING FROM MEMORY, I RECALL IT
16 IN CONTEXT OF THIS QUESTION, WHICH WAS ASKED AS
17 WELL LATER. I DON'T SPECIFICALLY REMEMBER IT BEING
18 USED IN OTHER QUESTIONS.
19 AND ONE OF THE REASONS -- WELL, I
20 WILL STOP THERE.
21 Q. YOU DON'T HAVE ANY OTHER YEAR
22 BESIDES THIS?
23 A. THE QUESTION, I BELIEVE, WAS ASKED
24 ON A ROPER SURVEY LATER, ONE OF THE COMMISSIONED
25 ONES, LATER ON IN THE '70'S THAT SHOWED A
26 DECREASING FAVORABILITY. BUT I DO NOT RECALL
27 SPECIFICALLY. I DON'T REMEMBER IT BEING USED IN
28 ANY OTHER SPECIFIC QUESTION.
3281
1 MR. PIUZE: OKAY. THOSE ARE ALL THE
2 QUESTIONS I HAVE GOT ON REDIRECT.
3 THANK YOU VERY MUCH.
4 THANK YOU.
5 THE COURT: THANK YOU, COUNSEL.
6 MR. LEITER: VERY BRIEFLY.
7
8 RECROSS-EXAMINATION
9
10 BY MR. LEITER:
11 Q. YOU WERE DISCUSSING WITH MR. PIUZE
12 JUST A MINUTE AGO PRIVATE POLLING THAT THE ROPER
13 ORGANIZATION DID FOR THE TOBACCO INDUSTRY; RIGHT?
14 A. THAT IS CORRECT, SIR.
15 Q. AND THE TOBACCO INDUSTRY IS NOT THE
16 ONLY INDUSTRY THAT ROPER HAS DONE PRIVATE POLLING
17 FOR; RIGHT?
18 A. I BELIEVE THAT'S THE CASE.
19 Q. AND YOU WERE AT ROPER FOR MANY
20 YEARS?
21 A. THE ROPER I WAS AT HAD NOTHING TO

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

22 DO WITH THE ROPER ORGANIZATION.
23 Q. YOU ARE FAMILIAR WITH THE POLLING
24 DONE BY THE ROPER ORGANIZATION?
25 A. SOME OF THE POLLING DONE BY THE
26 ROPER ORGANIZATION. THEY DON'T PUBLICIZE ALL THEIR
27 PROPRIETARY POLLS.
28 Q. BUT THEY HAD OTHER CLIENTS, TO YOUR
3282
1 KNOWLEDGE, THAT THEY DID PRIVATE POLLING FOR OTHER
2 THAN THE TOBACCO INDUSTRY; RIGHT?
3 A. I BELIEVE THAT'S TRUE, YES.
4 Q. AND DO YOU HAVE AN UNDERSTANDING OF
5 HOW THEY WORKED WITH PRIVATE COMPANIES, WHEN THEY
6 WERE HIRED TO DO A PRIVATE POLL?
7 A. GENERALLY.
8 Q. AS A GENERAL MATTER, DO THE PEOPLE
9 AT ROPER WORK WITH THE COMPANY IN FORMULATING THE
10 QUESTIONS?
11 A. THEY WOULD TYPICALLY. AND HERE I
12 AM RELYING NOT ONLY ON MY GENERAL KNOWLEDGE BUT THE
13 FACT THAT I HAPPEN TO KNOW SOME OF THESE PEOPLE
14 PERSONALLY, WOULD TYPICALLY DRAFT QUESTIONS
15 THEMSELVES AFTER DISCUSSION WITH A CLIENT AS TO
16 WHAT IT WAS THAT PEOPLE WANTED TO FIND OUT. AND
17 WOULD TYPICALLY GIVE THE CLIENT A CHANCE TO SEE THE
18 QUESTIONS AND TO COMMENT UPON THEM WITH,
19 OCCASIONALLY, IF THEY FELT THAT THE COMMENTS COMING
20 BACK WERE INAPPROPRIATE, THEY MIGHT RESIST THEM OR
21 THEY MIGHT AGREE WITH THEM. BUT THE CLIENT
22 TYPICALLY HAD A CHANCE THE SEE THE QUESTIONS BEFORE
23 THEY WERE ASKED.
24 Q. BUT THEY WERE, BY AND LARGE,
25 DRAFTED BY ROPER?
26 A. GENERALLY SPEAKING, YES. I CAN'T
27 SAY THAT ABOUT ANY PARTICULAR QUESTION. THAT'S THE
28 OVERALL PATTERN.
3283
1 Q. NOW, WHEN THIS POLL CAME ABOUT THAT
2 YOU WERE DISCUSSING WITH MR. PIUZE, YOU WEREN'T
3 PART OF THAT POLL, WERE YOU?
4 A. AGAIN, I HAD NOTHING WHATSOEVER TO
5 DO WITH THE ROPER ORGANIZATION AT ANY POINT, SO THE
6 ANSWER TO YOUR BIG QUESTION IS, NO, I WAS CONNECTED
7 WITH IT. BUT THE ROPER CENTER HAD NOTHING TO DO
8 WITH THE ROPER ORGANIZATION.
9 Q. YOU HAVE NO PERSONAL KNOWLEDGE OF
10 HOW THOSE QUESTIONS ARE FORMULATED?
11 A. THAT'S NOT QUITE TRUE. I DO HAPPEN
12 TO KNOW FROM PRIVATE CONVERSATION, I HAPPEN TO KNOW
13 SOME OF THE PEOPLE THAT ARE INVOLVED.
14 Q. I DON'T WANT YOU TO GO INTO
15 HEARSAY, BUT I WANT TO KNOW WHETHER YOU HAD ANY
16 PERSONAL INVOLVEMENT IN THIS.
17 A. NO, I DID NOT, NOR DID I SAY THAT.
18 MR. LEITER: I DON'T HAVE ANY FURTHER
19 QUESTIONS.
20 THE COURT: THANK YOU.
21 MR. PIUZE: NO, THANK YOU.
22 THE COURT: ALL RIGHT. NO FURTHER DIRECT
23 OR CROSS-EXAMINATION ON THIS WITNESS. SIR, YOU MAY
24 STEP DOWN. THE WITNESS IS EXCUSED.
25 THE WITNESS: THANK YOU, SIR.
26 THE COURT: LADIES AND GENTLEMEN, WE WILL

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

BE BACK HERE AT 1:30 THIS AFTERNOON. DON'T DISCUSS
THE CASE WITH ANYONE.

3284

(AT 12 NOON, THE LUNCH
RECESS WAS TAKEN TO
1:30 P.M. OF THE SAME DAY.)

3285

LOS ANGELES, CALIFORNIA; FRIDAY, APRIL 20TH, 2001
1:30 P.M.
DEPARTMENT 308 HON. CHARLES MC COY, JUDGE

(THE FOLLOWING PROCEEDINGS
WERE HELD IN OPEN COURT IN
THE PRESENCE OF THE JURY.)

THE COURT: NEXT WITNESS.
MR. PIUZE: ELVIS RON MENDEZ AS THE NEXT
WITNESS, PLEASE.

ELVIS RON MENDEZ,
CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN
AND TESTIFIED AS FOLLOWS:
THE CLERK: YOU DO SOLEMNLY STATE THE
TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING
BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE
TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.
THE WITNESS: I DO.
THE CLERK: BE SEATED, SIR.
IF YOU COULD STATE AND SPELL YOUR
FIRST AND LAST NAME.
THE WITNESS: ELVIS RON MENDEZ, E-L-V-I-S
M-E-N-D-E-Z.
/// /// ///
/// /// ///

3286

DIRECT EXAMINATION

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

BY MR. PIUZE:
Q. HI.
A. HI.
Q. WHAT DO YOU DO, WHAT'S YOUR OCCUPATION, PLEASE, E-L-V-I-S?
A. NATURAL GAS PARTICIPATION PARTNERSHIPS.
Q. IS RICHARD BOEKEN A FRIEND OF YOURS?
A. YES, HE IS.
Q. AND HAVE THE TWO OF YOU BEEN IN THE SAME BUSINESS TOGETHER FOR QUITE A WHILE?
A. YES, WE HAVE.
Q. HOW LONG HAVE YOU KNOWN RICHARD BOEKEN, PLEASE.
A. APPROXIMATELY 17 YEARS.
Q. TELL US HOW YOU FIRST MET HIM, PLEASE.
A. I MET RICHARD WHEN WE WERE WORKING AT MIDWEST PETROLEUM.
Q. ABOUT WHAT YEAR WAS THAT?
A. APPROXIMATELY '84.
Q. WHAT WAS DONE AT MIDWEST PETROLEUM?
A. ENERGY SALES.
Q. JUST GIVE US AN IDEA -- LET ME TELL YOU WHERE I AM GOING IN ADVANCE. HAVE YOU AND

3287

MR. BOEKEN SORT OF BEEN DOING THE SAME BUSINESS NOW FOR THE LAST DECADE OR SO?
A. YES.
Q. JUST WANT TO GIVE THE JURY A GENERAL IDEA OF WHAT THAT BUSINESS ENTAILS, TO START WITH.
SO GOING BACK TO MIDWEST, DID THE TWO OF YOU DO THE SAME THING AT MIDWEST?
A. YES, WE DID.
Q. JUST GIVE US A GENERAL IDEA WHAT YOU DID THERE, PLEASE.
A. PRIMARILY IT WAS ENERGY SALES OF VARIOUS PARTNERSHIPS FOR PARTICIPATION OF OIL AND GAS WELLS.
Q. HOW DOES THAT WORK?
A. HOW, SPECIFICALLY?
Q. WELL, HOW DO YOU FIND -- WHO DO YOU SELL TO, WHO'S WELLS ARE YOU SELLING, WHAT KIND OF PARTNERSHIPS?
A. YOU WOULD CONTACT INVESTORS AND SEE IF THEY WOULD LIKE TO PARTICIPATE IN WHAT YOU HAVE TO OFFER. YOU WOULD HAVE WELLS IN VARIOUS PARTS OF TEXAS, MAYBE COLORADO, WYOMING. THE COMPANY WOULD PUT TOGETHER THE PARTNERSHIPS AND OUR JOB WAS TO FIND INDIVIDUALS WHO WANTED TO PARTICIPATE IN THE PARTNERSHIPS.
Q. OKAY. WERE YOU AND MR. BOEKEN, BACK AT MIDWEST, WERE YOU BASICALLY COMMISSIONED

3288

SALES PEOPLE?
A. YES.
Q. ROUGHLY HOW LONG DID THE TWO OF YOU WORK TOGETHER?
A. AT MIDWEST?
Q. YES.
A. I THINK ABOUT TWO YEARS OR SO.

http://legacy.library.ucsf.edu/tid/whp07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

8 Q. ALL RIGHT. AFTER MIDWEST, DID THE
9 TWO OF YOU EVER WORK AGAIN TOGETHER AS CO-EMPLOYEES
10 FOR SOMEONE ELSE AT SOME OTHER PETROLEUM PLACE?
11 A. YES.
12 Q. WHERE WAS THAT?
13 A. R. H. N. SECURITIES.
14 Q. WHERE WAS THAT?
15 A. THAT WAS IN AGOURA, AGOURA,
16 CALIFORNIA.
17 Q. AND THE FIRST ONE THAT YOU
18 MENTIONED, WHERE WAS THAT?
19 A. VENICE, VENICE, CALIFORNIA.
20 Q. DID THE TWO OF YOU -- TELL ME THE
21 NAME OF THE FIRST PLACE AGAIN, PLEASE.
22 A. MIDWEST PETROLEUM.
23 Q. DID THE TWO OF YOU LEAVE MIDWEST AT
24 AROUND THE SAME TIME?
25 A. IT'S A LONG TIME AGO. IT SEEMS
26 LIKE WE KIND OF LEFT APPROXIMATELY THE SAME TIME,
27 YES.
28 Q. YOU DIDN'T LEAVE AS A PAIR?
3289
1 A. NO.
2 Q. WAS IT COINCIDENCE THAT THE TWO OF
3 YOU WOUND UP AT THE SAME SECOND PLACE OR HAD THAT
4 BE PLANNED IN ADVANCE?
5 A. IT WAS COINCIDENCE, WE KIND OF JUST
6 ENDED UP AT THE SAME PLACE THROUGH PEOPLE THAT WE
7 KNEW. WE WERE OVER THERE AND WE ENDED UP AT THE
8 SAME PLACE.
9 Q. AND THE SECOND PLACE WAS NAMED, SAY
10 IT BEGIN, H. R. M.
11 A. SECURITIES.
12 Q. SECURITIES.
13 ROUGHLY, HOW LONG WERE YOU THERE,
14 PLEASE.
15 A. APPROXIMATELY ABOUT THREE YEARS.
16 Q. CAN YOU GIVE US A ROUGH IDEA OF HOW
17 LONG MR. BOEKEN WAS THERE?
18 A. MY GUESS WOULD BE APPROXIMATELY
19 ABOUT THE SAME TIME, I THINK.
20 Q. WERE YOU BOTH COMMISSIONED SALES
21 PEOPLE THERE ALSO?
22 A. YES.
23 Q. WAS IT THE SAME KIND OF WORK?
24 A. YES.
25 Q. AFTER THOSE TWO TIMES, DID THE TWO
26 OF YOU EVER WORK AS CO-EMPLOYEES AT ANY OTHER
27 COMPANY?
28 A. NO.
3290
1 Q. WHEN YOU LEFT R. H. M., DID YOU GO
2 TO WORK FOR SOMEONE ELSE OR DID YOU START UP YOUR
3 OWN SHOP?
4 A. I STARTED ON MY OWN.
5 Q. ROUGHLY, WHAT YEAR WAS THAT?
6 A. ABOUT 1992, APPROXIMATELY.
7 Q. WHEN MR. BOEKEN LEFT R. H. M., WAS
8 THAT BEFORE OR AFTER YOU?
9 A. I BELIEVE HE LEFT AFTER I DID.
10 Q. DID HE START UP HIS OWN SHOW?
11 A. AT THAT TIME, I BELIEVE HE DID.
12 Q. NOW, I WILL TELL YOU IN ADVANCE, I

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

DON'T WANT TO GET INTO YOUR PERSONAL AFFAIRS.
OKAY?
A. UH-HUH.
Q. I AM NOT GOING TO GO THERE.
HAVE YOU BEEN AN OIL AND GAS --
WITHDRAW THAT.
WHAT WOULD YOU CALL -- JUST TELL ME
HOW YOU DESCRIBE YOUR PROFESSION, YOUR OCCUPATION.
A. I WOULD SAY THE PACKAGING OF
INTEREST IN NATURAL GAS FOR PARTICIPATION.
Q. IS THAT WHAT YOU HAVE BEEN DOING
FOR ABOUT, IN ROUND NUMBERS, THE LAST TEN YEARS?
A. YES.
Q. HAVE YOU KEPT CLOSE CONTACT WITH
MR. BOEKEN OVER THAT PERIOD OF TIME?
A. YES.

3291

Q. IS THAT WHAT HE HAS BEEN DOING FOR
THE LAST TEN YEARS?
A. TO THE BEST OF MY KNOWLEDGE, YES.
Q. DO YOU SOMETIMES WIND UP IN THE
SAME PLACE AT THE SAME TIME AS FAR AS PUTTING
TOGETHER SOME OF THESE PACKAGES THAT YOU SAY?
A. YES.
Q. EXPLAIN THAT, PLEASE.
A. IF WE ARE GOING TO PUT TOGETHER
PACKAGES, WE WOULD MAYBE FLY TO TEXAS TOGETHER,
REVIEW WHAT'S AVAILABLE AS FAR AS WELL SELECTIONS
AND SITES AND PACKAGE IT THEREAFTER, TAKING
PERCENTAGES TO PUT TOGETHER A PROGRAM TO OFFER.
Q. DO YOU KNOW WHAT RIATTA ENERGY IS?
A. YES.
Q. PLEASE TELL US.
A. RIATTA ENERGY IS A DRILLER AND
OPERATOR OF OIL AND GAS WELLS THAT WE GET PRODUCT
FROM.
Q. AND WHEN YOU SAY "WE," DO YOU MEAN
YOU AND MR. BOEKEN?
A. YES.
Q. WHERE IS RIATTA ENERGY LOCATED?
A. IN AMARILLO, TEXAS.
Q. WHEN YOU SAY THAT SOMETIMES THE TWO
OF YOU FLY DOWN TO TEXAS TO LOOK AT WELLS OR GET
PRODUCT OR WHATEVER, I AM GOING TO TALK ABOUT THAT
AGAIN IN A MINUTE. ARE YOU TALKING ABOUT RIATTA

3292

ENERGY?
A. YES.
Q. HOW LONG, ROUGHLY, HAVE THE TWO OF
YOU BEEN DOING BUSINESS WITH RIATTA ENERGY?
A. APPROXIMATELY 10 YEARS.
Q. NOW, HAVE YOU AND MR. BOEKEN EVER
BEEN BUSINESS PARTNERS?
A. I WOULDN'T SAY PARTNERS.
Q. HAVE YOU AND MR. BOEKEN TALKED
ABOUT, IN THE FUTURE, SHARING OFFICE SPACE AND
SHARING JUST SORT OF SOMEHOW SHARING OR COMING
TOGETHER BUSINESS-WISE?
A. YES.
Q. ASIDE FROM TALK ABOUT DOING IT
SOMETIME IN THE FUTURE, DID ANYTHING EVER HAPPEN
THAT WAS MORE CONCRETE THAN THAT?
A. ON OCCASIONS, WE MAY HAVE GONE AND

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

LOOKED AT SOME SPACE BUT WE NEVER WENT AHEAD ON ANYTHING.
Q. OKAY. YOU WALKED UP, RIGHT UP TO THE EDGE BUT NEVER GOT YOUR FEET WET?
A. RIGHT.
Q. WHEN YOU WOULD GO, LET ME WITHDRAW THAT.
DO THE TWO OF YOU TALK BUSINESS FREQUENTLY?
A. OH, QUITE A BIT.
Q. OVER A TEN-YEAR PERIOD OF TIME?
3293
A. YES.
Q. DO YOU LET HIM KNOW WHAT YOU ARE DOING -- I DON'T MEAN DOWN TO THE PENNY OR ANYTHING LIKE THAT, BUT DO YOU GIVE HIM AN IDEA OF WHAT KIND OF DEALS YOU ARE IN AND WHAT YOU ARE PUTTING TOGETHER?
A. HE WILL PRETTY MUCH HAVE KNOWLEDGE OF DEALS I AM PARTICIPATING IN, YES.
Q. DOES THAT WORK BOTH WAYS?
A. PRETTY MUCH SO, YES.
Q. UNDER WHAT CIRCUMSTANCES, I KNOW YOU FLY TO TEXAS, AND I AM GOING TO RETURN TO THAT, BUT HOW DO YOU GUYS SHARE INFORMATION, HOW DOES THAT WORK?
A. BASICALLY, INFORMATION ON THE PRODUCTION OF WELLS OR WHAT ADJACENT WELLS, PRODUCTION, WHAT THEY HAVE PRODUCED, HOW LONG THEY HAVE PRODUCED FOR, SO WE CAN HAVE SOME COMPARABLES. WE WOULD SHARE INFORMATION ON THAT SENSE. SO WE KNOW THE GENERAL AREA AND SURROUNDING PROPERTIES.
Q. WHEN YOU GO DOWN TO TEXAS, DO YOU ACTUALLY GO OUT AND STOMP AROUND IN THE DUST, LOOK AT OIL FIELDS AND GAS FIELDS?
A. YES.
Q. I DON'T WANT ANY NAMES, I SPECIFICALLY DON'T WANT YOU TO NAME ANY NAMES NOW, BUT DO YOU HAVE YOUR OWN CLIENTS THAT YOU PACKAGE THESE DEALS FOR?
3294
A. YES.
Q. AND ARE THESE PEOPLE TOTALLY SEPARATE FROM MR. BOEKEN'S CLIENTS WHO HE PACKAGES THESE DEALS FOR?
A. YES.
Q. HAVE YOU MAINTAINED, AND AGAIN, I SAY, I AM NOT -- DON'T WANT TO GET INTO NAMES OR ANYTHING SPECIFIC, BUT HAVE YOU MAINTAINED THE SAME GROUP OF CLIENTS OVER A LONG PERIOD OF TIME?
A. YES.
Q. HAS MR. BOEKEN?
A. YES.
Q. NOW, AS A RESULT OF FLYING DOWN THERE, FLYING BACK AND JUST LETTING EACH OTHER KNOW WHAT'S GOING ON, TELL ME THIS: WHEN YOU BUY -- WHAT WOULD BE THE RIGHT WORD, PIECES OR --
A. PERCENTAGES.
Q. WHEN YOU BUY PERCENTAGES OF A GUY'S GAS WELL?
A. UH-HUH.
Q. AND WHEN HE BUYS PERCENTAGES OF GAS WELLS, DO THE TWO OF YOU TALK BACK AND FORTH ABOUT

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

HOW MUCH YOU ARE TAKING, HOW MUCH YOU ARE SPENDING?
A. USUALLY, WE DO, YES.
Q. AS A GENERAL PROPOSITION, JUST OVER
A LONG PERIOD OF TIME, TEN YEARS, HAS HE TAKEN
BIGGER PIECES THAN YOU, BIGGER PARTICIPATION OR
HAVE YOU TAKEN BIGGER PARTICIPATION THAN HIM, OR IS
3295
IT A DRAW OR WHAT?
A. SOMETIMES WE WILL TAKE THE SAME
AMOUNT AND SOMETIMES HE MAY TAKE A LARGER PORTION
THAN I.
Q. OVER A LONG PERIOD OF TIME, DO YOU
THINK THE PARTICIPATION HE'S TAKEN ARE MORE THAN
YOURS?
A. I WOULD SAY YES.
Q. DO YOU SOMETIMES KEEP SOME OF THE
PARTICIPATION FOR YOURSELF AS OPPOSED TO TURNING IT
AROUND AND SELLING IT TO SOMEONE ELSE?
A. YES.
Q. AND DOES HE DO THAT TOO?
A. TO MY KNOWLEDGE, YES.
Q. HOW'S BUSINESS?
A. PRICES ARE GOOD RIGHT NOW.
Q. AS OUR ENERGY COSTS GO UP, UP, UP,
DO THE PROFITS IN THE OIL AND GAS AND ENERGY
BUSINESS GO UP, UP, UP?
A. YES.
Q. SO YOU ARE ONE OF THE CULPRITS?
A. I HAVE NOTHING TO DO WITH THAT.
Q. HERS'S WHAT I AM GETTING AT, SOME
PEOPLE SAY OUR ECONOMY IS GOING THE WRONG WAY AND
WE ALL KNOW THE STOCK MARKET IS GOING THE WRONG WAY
BUT THE OIL AND GAS MARKET, THAT'S NOT GOING THE
WRONG WAY?
A. NOT RIGHT NOW, NO.
3296
Q. HOW OFTEN, JUST GIVE ME AN IDEA,
GIVE US AN IDEA, IN AN AVERAGE YEAR OR AN AVERAGE
MONTH, HOW OFTEN WOULD YOU AND MR. BOEKEN, OVER THE
COURSE OF TEN YEARS, HOW OFTEN WOULD YOU TALK
BUSINESS?
HOW OFTEN WOULD YOU GET TOGETHER
ONE WAY OR ANOTHER BY PHONE OR BY MEETING OR
WHATEVER?
A. WHEN WE WERE NOT AT THE SAME
LOCATION?
Q. WELL, NO, INCLUDING THE SAME
LOCATION.
A. WELL, IF WE ARE AT THE SAME
LOCATION, IT'S AN EVERY DAY THING, WE GO TO LUNCH
ON A DAILY BASIS.
Q. I SEE. WHEN YOU ARE WORKING?
A. YEAH. AND WHEN WE ARE NOT WORKING
TOGETHER, IT WOULD DEPEND, SOMETIMES, MAYBE SIX
MONTHS, AND WE HAVEN'T SEEN MUCH OF EACH OTHER AND
THEN OTHER TIMES MAYBE ONCE A WEEK OR ONCE A MONTH.
Q. HOW OFTEN DO YOU THINK THE TWO OF
YOU HAVE FLOWN DOWN TO TEXAS TOGETHER? THAT IS A
YEARLY THING OR A COUPLE TIMES A YEAR?
A. AVERAGE ABOUT ONCE A YEAR.
Q. HAVE THE TWO OF YOU ATTENDED OTHER
BUSINESS FUNCTIONS TOGETHER, BESIDES GOING DOWN TO
TEXAS TO LOOK AT THE WELLS?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

28 A. WE HAVE.
3297
1 Q. SUCH AS?
2 A. I HAVE BEEN TO -- WE WENT TO COMDEX
3 CONVENTIONS, BEEN TO DIFFERENT TYPE OF SEMINARS AND
4 THINGS LIKE THAT, THAT NATURE.
5 Q. AS FAR AS THE BUSINESS END IS
6 CONCERNED, WOULD IT BE FAIR TO SAY THAT THE TWO OF
7 YOU HAVE STAYED IN TOUCH PRETTY MUCH OVER A
8 TEN-YEAR PERIOD?
9 A. YES.
10 Q. WHAT'S COMDEX, IS THAT WHAT YOU
11 SAID?
12 A. YEAH, IT'S COMPUTER CONVENTIONS IN
13 LAS VEGAS.
14 Q. DO YOU KNOW SOMEONE NAMED SCOVILLE
15 WALKER?
16 A. YES, I DO.
17 Q. WHO IS SCOVILLE WALKER?
18 A. SCOVILLE WALKER IS SOMEONE I MET
19 WHILE I WAS AT R. H. M. SECURITIES, HE WAS ONE OF
20 THE MANAGERS AT R. H. M.
21 Q. WAS MR. BOEKEN THERE AT THE SAME
22 TIME?
23 A. YES, HE WAS.
24 Q. THE THREE OF YOU USED TO GO TO
25 LUNCH TOGETHER SOMETIMES?
26 A. YES.
27 Q. ABOUT IN ROUND NUMBERS, FIVE, SIX
28 YEARS AGO OR SO, DID MR. WALKER HAVE A BUSINESS
3298
1 PROPOSAL FOR BOTH YOU AND MR. BOEKEN?
2 A. YES.
3 Q. DESCRIBE IT, PLEASE.
4 A. IT WAS AN A.T.M. OPPORTUNITY. HE
5 INTRODUCED US TO A COMPANY HE WAS WORKING WITH WHO
6 WOULD SET UP A.T.M. MACHINES FOR INDIVIDUALS WHO
7 WANTED TO GET INVOLVED, WHEREBY THEY WOULD DERIVE A
8 PERCENTAGE OF THE PROFITS WHENEVER THE A.T.M.
9 MACHINE WAS USED.
10 Q. AND WHAT DID THAT HAVE TO DO WITH
11 YOU AND MR. BOEKEN?
12 A. HE THOUGHT IT WOULD BE A GOOD
13 OPPORTUNITY FOR US AND WE WOULD BE ABLE TO UTILIZE
14 SOME OF OUR CLIENT BASE AND GET SOME FOLKS INVOLVED
15 IN THAT SOMEHOW.
16 Q. IN OTHER WORDS, SOME OF THE PEOPLE
17 WHO YOU HAD BEEN SELLING OIL AND GAS LEASES TO TRY
18 TO GET THEM TO GET INVOLVED BUYING OR LEASING OR
19 WHATEVER THE A.T.M. MACHINES?
20 A. THAT IS CORRECT.
21 Q. DID YOU DO THAT?
22 A. YES, I DID.
23 Q. DID MR. BOEKEN DO THAT?
24 A. YES, HE DID.
25 Q. AND WAS THE DEAL, I DON'T -- IT
26 DOESN'T MATTER TO ME IF YOU BOTH HAVE THE SAME SIZE
27 DEAL, BUT DID YOU BOTH TAKE THE SAME DEAL SO THAT
28 YOU WOULD BOTH BE AFFECTED BY IT IN THE SAME WAY?
3299
1 A. YES.
2 Q. DID YOU GO TO SOME OF YOUR VALUED
3 CLIENTS AND GET THEM INTO THE A.T.M. BUSINESS?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

4 A. YES, I DID.
5 Q. DID HE?
6 A. TO MY KNOWLEDGE, HE DID.
7 Q. HOW DID IT TURN OUT?
8 A. NOT VERY WELL.
9 Q. MEANING, A MONEY LOSER?
10 A. YES.
11 Q. BIG MONEY LOSER?
12 A. YES.
13 Q. DID YOU AND MR. BOEKEN, AND I DON'T
14 NEED CONTENT NOW, I DON'T KNOW CONTENT, BUT JUST
15 SORT OF A FLAVOR, DID THE TWO OF YOU DISCUSS HOW TO
16 HANDLE THE BUSINESS DEAL THAT DIDN'T GO SO WELL?
17 A. YES, WE DID.
18 Q. WHAT DID YOU DECIDE?
19 A. WE DECIDED THAT --
20 MR. CARLTON: OBJECTION, HEARSAY.
21 THE COURT: WELL, THIS IS ONE PARTY TO
22 THE DECISION, OVERRULED.
23 Q BY MR. PIUZE: WHAT DID YOU
24 DECIDE?
25 A. I PERSONALLY DECIDED THAT I WOULD
26 HAVE TO EAT THE LOSS MYSELF AND WHAT I DID, I TOOK
27 THE AMOUNT THAT THEY INVESTED IN THE A.T.M. AND I
28 GOT THEM PERCENTAGES IN WORKING WELLS TO
3300
1 RECAPTURE --
2 MR. CARLTON: OBJECTION, RELEVANCE, YOUR
3 HONOR.
4 THE COURT: OVERRULED.
5 THE WITNESS: TO RECAPTURE THE FUNDS THAT
6 THEY HAD INVESTED IN THE A.T.M.'S.
7 Q BY MR. PIUZE: I DON'T WANT ANY
8 QUOTES NOW, DID HE, MR. BOEKEN, AGREE THAT YOU
9 SHOULD DO THAT?
10 A. DID HE AGREE THAT I SHOULD DO THAT.
11 MR. CARLTON: OBJECTION.
12 MR. PIUZE: YES.
13 MR. CARLTON: HEARSAY.
14 THE COURT: OVERRULED.
15 THE WITNESS: YEAH --
16 THE COURT: HOLD ON, NOT OFFERED FOR
17 HEARSAY PURPOSE.
18 DID HE, SIR?
19 THE WITNESS: YES.
20 Q BY MR. PIUZE: DID YOU ADVISE HIM
21 THAT HE SHOULD DO THE SAME THING?
22 A. YES.
23 Q. IN OTHER WORDS, EAT THE LOSS, SO
24 LONG-TERM VALUED CLIENTS WOULDN'T?
25 A. YES.
26 Q. ABOUT WHAT YEAR WAS IT THAT YOU
27 WOUND UP, AND I AM KIND OF INFORMAL, BUT EATING THE
28 LOSS, ABOUT WHAT YEAR WAS THAT?
3301
1 A. I THINK IT WAS AROUND 1986.
2 Q. AND I DON'T, AGAIN, I DON'T WANT TO
3 GET INTO YOUR PERSONAL AFFAIRS, BUT, FOR YOU, WAS
4 IT A PRETTY SIGNIFICANT LOSS?
5 A. YES.
6 Q. MR. BOEKEN HAS TESTIFIED HERE ON A
7 VIDEO TAPED DEPOSITION THAT THE JURY HAS SEEN THAT
8 DURING THE, BASICALLY, THE MID-1990'S, HE WAS

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Digitized by http://www.industrydocuments.ucsf.edu/docs/nnxl0001

9 MAKING SOMEPLACE IN THE VICINITY OF 200, $250,000 A
10 YEAR OFF OF THE OIL AND GAS LEASING BUSINESS.
11 DOES THAT SURPRISE YOU AT ALL?
12 A. NOT NECESSARILY.
13 Q. WHY DO YOU SAY "NOT NECESSARILY"?
14 A. THE WELLS WE HAD WERE GOOD AND THEY
15 WERE MONEY MAKERS, SO FOLKS KEPT INVESTING BECAUSE
16 WE WERE DOING WELL.
17 Q. LET'S PUT IT THIS WAY, AGAIN, I
18 DON'T WANT NUMBERS, BUT WERE THOSE GOOD YEARS FOR
19 YOU?
20 A. THEY WERE FAIRLY GOOD, YES.
21 Q. WITH THE EXCEPTION OF '96?
22 A. YES.
23 Q. OKAY. HERE'S A NEW SUBJECT. THANK
24 YOU. NEW SUBJECT.
25 LET'S GO BACK TO MIDWEST PETROLEUM,
26 AND THEN BACK TO THE THREE INITIALS, AND I KEEP
27 FORGETTING THEM?
28 A. R. H. M.
3302
1 Q. AT ONE OF THESE PLACES AT LEAST,
2 DID YOU, WERE YOU IN CLOSE QUARTERS TO MR. BOEKEN,
3 WHERE YOUR DESK WAS, WHERE HIS DESK WAS, WHEN YOU
4 WORKED TOGETHER?
5 A. YES.
6 Q. HOW CLOSE?
7 A. WITHIN ROUGHLY THREE FEET, THREE,
8 FOUR FEET.
9 Q. THAT'S PRETTY CLOSE.
10 DID HE SMOKE?
11 A. YES, HE DID.
12 Q. HAVE YOU EVER SMOKED?
13 A. NO.
14 Q. WOULD YOU CONSIDER YOURSELF TO BE
15 A, LET'S START WITH ATHLETE?
16 A. I AM ATHLETIC.
17 Q. IS IT IMPORTANT TO YOU TO KEEP IN
18 SHAPE?
19 A. YES.
20 Q. DID YOU USED TO RUN TRACK IN
21 COLLEGE?
22 A. YES.
23 Q. DO YOU STILL RUN IT REGULARLY?
24 A. YES.
25 Q. AND EAT STUFF LIKE BALANCE BARS FOR
26 LUNCH?
27 A. YES.
28 Q. AS FAR AS HEALTH AND PHYSICAL
3303
1 FITNESS AND PHYSICAL WELL-BEING IS CONCERNED, WOULD
2 YOU CONSIDER YOURSELF TO BE ORIENTED IN THAT
3 DIRECTION?
4 A. YES, I WOULD.
5 Q. NOW, YOU'RE AT A DESK THREE FEET
6 AWAY FROM MR. BOEKEN AND THIS WAS 15 OR SO YEARS
7 AGO, WAS IT LEGAL TO SMOKE INSIDE OF PUBLIC
8 BUILDINGS THEN?
9 A. NO.
10 Q. NOT?
11 A. NO, IT WAS NOT LEGAL.
12 Q. IT WAS NOT?
13 A. I DON'T THINK IT WAS -- WELL,

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Digitized by http://www.industrydocuments.ucsf.edu/docs/nnxl0001

ACTUALLY, YES, IT WAS.
Q. BETTER BE CAREFUL NOW.
A. YES, IT WAS.
Q. I HONESTLY DON'T KNOW THE YEAR IT CHANGED, AS I STAND HERE RIGHT NOW.
AT ONE POINT IT WAS LEGAL TO SMOKE IN PUBLIC BUILDINGS?
A. YES.
Q. WE WILL SHIFT OUT -- WE WILL FIND OUT THE YEAR AS WE GO ALONG.
WHEN YOU WORKED WITH MR. BOEKEN, INDOORS, THREE FEET AWAY FROM HIM, YOU BEING VERY HEALTH CONSCIOUS, WAS HE SMOKING RIGHT NEXT TO YOU SOMETIMES?
A. YES.

3304

Q. DID YOU LIKE THE SMOKE?
A. NO.
Q. DID YOU TELL HIM?
A. YES.
Q. AND AS A GENERAL PROPOSITION, AND I DON'T WANT TO GO THROUGH DAY BY DAY OR WEEK BY WEEK, BUT OVER A PERIOD OF TIME, DID THE TWO OF YOU REACH ACCOMMODATIONS?
A. YES.
Q. SUCH AS?
A. HE WOULD GENERALLY GO OUTSIDE TO SMOKE AND I PURCHASED A LITTLE FAN TO KIND OF BLOW IT BACK IN HIS DIRECTION.
Q. SO IF HE WAS SMOKING NEXT TO YOU, YOU'D POINT THE FAN IN HIS DIRECTION AND THE SMOKE WOULD GO BACK TO HIM?
A. YES.
Q. IF I GAVE YOU CHOICES LIKE LIGHT, HEAVY, MEDIUM, COULD YOU USE ONE TO DESCRIBE MR. BOEKEN'S SMOKING HABITS?
A. I WOULD PUT IT SOMEWHERE BETWEEN MEDIUM TO HEAVY.
Q. DID HE SMOKE A LOT?
A. I THOUGHT HE DID.
Q. WHAT DID HE SMOKE?
A. WHAT DO YOU MEAN?
Q. THIS IS A LEADING QUESTION, ARE YOU READY? MARLBOROS, DID HE SMOKE MARLBOROS?

3305

A. YES, HE DID.
Q. DID YOU OCCASIONALLY SEE HIM WITH ANOTHER BRAND?
A. YES.
Q. WAS IT ALMOST ALWAYS MARLBOROS?
A. USUALLY, YES.
Q. WERE THERE TIMES WHEN YOU SAID SOMETHING TO HIM LIKE THAT SMOKE AIN'T GOOD FOR YOU?
MR. CARLTON: OBJECTION, LEADING.
THE COURT: IT WASN'T A LEADING QUESTION.
MR. PIUZE: I WILL WITHDRAW THE QUESTION.
I WITHDRAW IT ANYWAY. WHETHER IT WAS LEADING OR NOT.
Q BY MR. PIUZE: DID YOU OCCASIONALLY MAKE COMMENTS TO HIM ABOUT THE SMOKING?
A. YES, I DID.

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

Q. WHAT?
A. BASICALLY, NOT GOOD FOR YOU, IT
WOULD BE HEALTHIER IF YOU DIDN'T SMOKE.
Q. ANYTHING BEYOND THAT?
A. NOT REALLY, NO.
Q. DID YOU EVER GET INTO DETAILS WITH
HIM LIKE, THE SURGEON GENERAL SAYS SMOKING CAUSES
LUNG CANCER?
A. NO.
Q. DID YOU EVER GET INTO ANY SPECIFIC
3306
ILLNESSES OR ILLNESS OR AILMENTS OR DOWNSIDES FROM
SMOKING WITH HIM?
A. NO.
Q. DID YOU OBSERVE MR. BOEKEN TRY TO
STOP SMOKING?
A. YES.
Q. MORE THAN ONCE?
A. YES.
Q. HOW MANY TIMES?
A. THREE TIMES, AT LEAST.
Q. AND I GUESS WE KNOW HIS ATTEMPTS
WEREN'T SUCCESSFUL.
A. YES.
Q. TELL US WHAT YOU CAN REMEMBER ABOUT
WHAT YOU SAW HIM DO OR TRY TO DO TO STOP SMOKING,
PLEASE.
A. HE USED THE PATCH, THE NICOTINE
PATCH, TRIED TO USE THE NICOTINE PATCH AND IT
SEEMED TO WORK FOR A WHILE.
AND HE USED CHEWING GUM, SOME KIND
OF A NICORETTE GUM, I BELIEVE.
AND HE JUST TRIED TO STOP COLD
TURKEY, YOU KNOW. I REMEMBER HE WAS JUST TRYING
DIFFERENT THINGS AND ASKED HIM, HOW IT IS GOING,
AND SOMETIMES HE WAS GOOD AND THEN AFTER A WEEK OR
SO, I WOULD SEE HIM SMOKING AGAIN.
Q. WHAT'S THE LONGEST, AND I AM SURE
YOU WEREN'T TIMING HIM WITH A WATCH, BUT GIVE US AN
3307
IDEA, WHAT'S THE LONGEST YOU THINK YOU SAW HIM STOP
SMOKING DURING ANY OF THESE ATTEMPTS, PLEASE.
A. WHEN I WAS AROUND HIM ON A
CONTINUAL BASIS, I WOULD SAY APPROXIMATELY TWO
WEEKS.
Q. WHY DO YOU ANSWER IT THAT WAY, WHEN
YOU WERE AROUND HIM ON A CONTINUAL BASIS?
A. BECAUSE I WOULD NOT KNOW HOW OFTEN
HE WOULD HAVE STOPPED SMOKING IF IT WAS NOT --
BECAUSE FOR A FEW MONTHS MAYBE I HAD NOT SEEN HIM,
THREE OR FOUR MONTHS I WOULD NOT KNOW THE EXTENT OF
HIS SMOKING OR NOT SMOKING.
Q. SO WHILE YOU WERE WORKING TOGETHER
AND THE TWO OF YOU WOULD SEE EACH OTHER DAILY, WAS
THE LONGEST YOU EVER SAW HIM STOP SMOKING, WHATEVER
YOU JUST SAID?
A. YEAH, I WOULD SAY, APPROXIMATELY
TWO WEEKS.
Q. DID HE -- WELL, I AM GOING TO LET
THAT GO.
DO YOU KNOW HIS WIFE?
A. YES, I DO.
Q. HOW DO YOU KNOW HIS WIFE?

http://legacy.library.ucsf.edu/tid/whp07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

A. I MET HER THROUGH RICHARD AND WE HAVE BEEN OUT TOGETHER AND MY WIFE AND ALL FOUR OF US.
Q. DOES HIS WIFE SMOKE?
A. I BELIEVE SHE DOES.

3308

Q. DOES YOUR WIFE SMOKE?
A. NO.
Q. CAN YOU RECALL A LUNCH WHERE YOU AND RICHARD BROKEN AND SCOVILLE WALKER WERE TOGETHER AND MR. BOEKEN WAS GIVING A PRESENT TO MR. WALKER'S DAUGHTER?
A. YES.
Q. HOW IS IT THAT YOU CAN RECALL THAT PARTICULAR LUNCH?
A. ACTUALLY, I THINK IT WAS, WE DISCUSSED SOMETHING ABOUT THE A.T.M.'S AT THAT POINT, PRIOR TO IT STARTING, AND WE HAD ALL MET, I BELIEVE IT WAS THE DAILY GRILL.
THE COURT: SIR, YOU MAY HAVE TO SPEAK UP. I CAN HEAR YOU FINE BUT THE LAST JUROR RIGHT DOWN THERE WANTS TO HEAR YOU JUST AS MUCH AS I DO. OKAY.
THANK YOU.
MR. PIUZE: MAYBE IF I STAND BACK HERE -- SORRY.
Q BY MR. PIUZE: WERE THERE -- LET'S GO TO THAT BEFORE LUNCH. LET'S GO BACK TO WHEN YOU ALL USED TO WORK TOGETHER.
DID YOU EVER HEAR MR. WALKER GIVE, OH, A MISSIONARY TALK OR A SPEECH, ANTI-SMOKING SPEECH, DO YOU EVER RECALL THAT HAPPENING?
A. NOT SPECIFICALLY, NO.
Q. SO WHAT I MEAN IS SOMETHING LIKE,

3309

YOU KNOW, SMOKING IS REALLY ROTTEN, NO ONE SHOULD SMOKE, THIS STUFF CAN KILL YOU, ANYTHING LIKE THAT, CAN YOU RECALL MR. WALKER EVER GIVING A SPEECH LIKE THAT?
MR. CARLTON: OBJECTION, LEADING, ASKED AND ANSWERED.
THE COURT: IT IS NOT LEADING, OVERRULED.
THE WITNESS: NO, NOT A SPECIFIC INCIDENT.
Q BY MR. PIUZE: WELL, I DON'T EVEN NEED A SPECIFIC INCIDENT. CAN YOU REMEMBER HIM BEING A MISSIONARY LIKE THAT OR -- MAYBE THAT'S A BAD WORD.
CAN YOU REMEMBER HIM BEING AN ANTI-SMOKING ADVOCATE?
A. NO.
Q. CAN YOU EVER RECALL HIM EVER TALKING LIKE THAT TO MR. BOEKEN?
A. NO.
Q. WHAT ABOUT DURING THE LUNCH WHEN THE THREE OF YOU WERE TOGETHER AND MR. BOEKEN HAD A PRESENT FOR MR. WALKER'S DAUGHTER.
CAN YOU REMEMBER A SPEECH LIKE THAT?
A. I DON'T REMEMBER A PARTICULAR SPEECH.
MR. CARLTON: ASKED AND ANSWERED.
THE COURT: OVERRULED.

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

3310
THE WITNESS: I MEAN, WE WOULD JUST, I
WOULD MAKE GENERAL STATEMENTS TO HIM, LIKE, YOU
KNOW, YOU SHOULDN'T SMOKE AND FOR MUCH MORE THAN
THAT, I DON'T HAVE A CLEAR RECOLLECTION OF ANYTHING
MORE THAN THAT BEING SAID.
Q. HAVE YOU EVER HEARD THAT ONE OF MR.
WALKER'S PARENTS DIED FROM A SMOKING-RELATED
ILLNESS?
A. NO.
Q. NOW, NEW SUBJECT, AGAIN, THIS IS
PROBABLY THE LAST ONE.
GIVEN YOUR PHYSICAL FITNESS MODE,
DID YOU SOMETIMES TALK TO MR. BOEKEN ABOUT RUNNING
OR WORKING OUT OR GETTING IN SHAPE AND STUFF LIKE
THAT?
A. YES, I DID.
Q. WERE YOU A BIG ADVOCATE OF THAT?
A. YES.
Q. HAVE YOU EVER GONE TO A GYM WITH
HIM OR WORK OUT WITH HIM OR RUN WITH HIM OR DONE
ANYTHING LIKE THAT WITH HIM?
A. YES, UH-HUH, I HAVE.
Q. WHAT?
A. I HAVE TAKEN HIM TO THE GYM, WE
HAVE BEEN TO THE GYM A FEW TIMES, USED A TREADMILL,
LIGHT WEIGHTS, YOU KNOW, LIGHT WORKOUT, TRY TO GET
HIM TO DO SOME CARDIO.
Q. CARDIO IS GOOD FOR YOU?
3311
A. YEAH.
Q. WAS MR. BOEKEN, AT TIMES YOU HAVE
KNOWN HIM, SOMETIMES OVER WEIGHT, LET'S SAY, 20, 30
POUNDS OVER WEIGHT, SOMETHING LIKE THAT?
A. YES.
Q. AND WOULD YOU ENCOURAGE HIM TO, BY
RUNNING OR BEING ON A TREADMILL OR WHATEVER, GET
RID OF THAT WEIGHT?
A. YES.
Q. HOW DID HE DO?
A. DID OKAY FOR A LITTLE WHILE AND
THEN STOPPED.
Q. DO YOU HAVE ANY, JUST BASED ON
YOUR, THE YEARS YOU HAVE KNOWN HIM, DO YOU HAVE ANY
FEEL FOR WHETHER HE HAS WORKED OUT WITH WEIGHTS IN
THE PAST?
A. I KNOW HE HAS IN THE PAST, YES.
Q. AND THAT IS BASED ON WHAT?
A. ON WHAT HE HAD TOLD ME.
Q. NOW, LET ME JUST SEE IF I HAVE GOT
ANYTHING ELSE, GIVE ME A MINUTE, PLEASE.
I WILL END WITH THIS.
BASED ON HOWEVER MANY YEARS IT WAS
THAT YOU HAVE KNOWN HIM, 17, WHATEVER IT IS, DID HE
LIKE THE BUSINESS HE WAS IN, DO YOU HAVE A FEEL FOR
THAT?
A. I'D SAY GENERALLY, YES.
Q. AND IN CASE I DIDN'T ASK THIS, YOU
3312
TOLD US YOU HAD A LONG-TERM BASIS OF THE SAME
CLIENTS WHO YOU SOLD AND RESOLD TO. FROM WHAT YOUR
UNDERSTANDING WAS OF HIS BUSINESS, WAS IT THE SAME
WITH HIM?

http://legacy.library.ucsf.edu/tid/whp07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

5 A. YES.
6 MR. PIUZE: I THINK THAT DOES IT FOR ME,
7 THANK YOU.
8 THE COURT: THANK YOU, SIR.
9 MR. CARLTON. I BELIEVE I WILL BE
10 TAKING THE WITNESS.
11
12 CROSS-EXAMINATION
13
14 BY MR. CARLTON:
15 Q. HELLO, MR. MENDEZ.
16 YOU FIRST MET MR. BOEKEN AT MIDWEST
17 PETROLEUM?
18 A. THAT IS CORRECT.
19 Q. IS IT POSSIBLE THAT YOU STARTED AT
20 MIDWEST PETROLEUM OR YOU MET HIM AT MIDWEST
21 PETROLEUM IN 1987?
22 A. IT'S ENTIRELY POSSIBLE. I AM NOT
23 SPECIFIC ON THE EXACT YEARS BUT IT WAS SOMEWHERE
24 AROUND IN THE EARLY TO MID-80'S.
25 Q. OKAY. SO YOU WORKED WITH HIM FOR A
26 LITTLE WHILE A COUPLE YEARS, I GUESS, AT MIDWEST
27 PETROLEUM?
28 A. UH-HUH.
3313
1 Q. AND THEN YOU MOVED ON TO R. H. M.
2 SECURITIES?
3 A. YES.
4 Q. IS THAT IT?
5 AND YOU WERE THERE FOR THREE YEARS
6 OR SO?
7 A. APPROXIMATELY, YES.
8 Q. AND AFTER THAT -- SO, WHAT TIME
9 PERIOD ARE WE TALKING ABOUT WHEN YOU LEFT R. H. M.
10 SECURITIES?
11 A. 1991, ROUGHLY AROUND THERE, OR SO.
12 Q. AND YOU BOTH WENT OFF ON YOUR OWN?
13 A. YES.
14 Q. YOU STAYED IN TOUCH WITH MR. BOEKEN
15 THEN, AFTER THAT?
16 A. YES.
17 Q. AND I THINK YOU TESTIFIED THAT,
18 MAYBE I HAVE MISUNDERSTOOD, SO CORRECT ME IF I AM
19 WRONG, BUT IT WAS DURING THIS PERIOD THAT AFTER YOU
20 LEFT R. H. M. SECURITIES UNTIL THE PRESENT, PRETTY
21 MUCH, THAT YOU WOULD SEE EACH OTHER MAYBE ONCE
22 EVERY SIX MONTHS, MAYBE ONCE A WEEK, MAKE ONCE A
23 MONTH, SOMETHING IN THAT RANGE?
24 A. THAT IS CORRECT.
25 Q. SORT OF VARIABLE?
26 A. YES.
27 Q. DIDN'T KNOW WHAT WAS GOING ON.
28 AND YOU HAD YOUR OWN BUSINESS;
3314
1 RIGHT?
2 A. YES.
3 Q. WHICH WAS HIGH MARK?
4 A. YES.
5 Q. THAT'S THE NAME OF IT?
6 A. UH-HUH.
7 Q. WHAT WAS THE NAME OF HIS BUSINESS?
8 A. I BELIEVE AT THAT TIME WAS ENEX.
9 Q. AND THAT'S E-N-E-X; RIGHT?

http://legacy.library.ucsf.edu/tid/whn07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

10 A. YES.
11 Q. ENEX RESOURCES?
12 A. UH-HUH. RIGHT.
13 Q. DID YOU EVER WORK WITH MR. BOEKEN
14 TO DEVELOP OIL AND GAS PROPERTIES?
15 A. I AM NOT QUITE SURE WHEN YOU SAY
16 WORK WITH, WHAT DO YOU MEAN, SPECIFICALLY?
17 Q. WELL, I AM TRYING TO UNDERSTAND
18 WHAT YOUR TESTIMONY WAS HERE A LITTLE WHILE AGO.
19 I GATHERED THAT YOU WOULD
20 OCCASIONALLY FLY WITH HIM TO TEXAS?
21 A. YES.
22 Q. TO WORK TOGETHER AND PACKAGE UP OIL
23 AND GAS PROPERTIES?
24 A. YES.
25 Q. THAT'S WHAT YOU TESTIFIED TO?
26 A. YES.
27 Q. NOW, DO YOU REMEMBER YOUR
28 DEPOSITION IN THIS CASE?
3315
1 A. SOMEWHAT, YES, I DO.
2 Q. DO YOU REMEMBER BEING ASKED, OTHER
3 THAN WORKING AS CO-EMPLOYEES, HAVE YOU EVER HAD ANY
4 BUSINESS RELATIONSHIP, WHETHER A PARTNERSHIP, JOINT
5 VENTURE OR ANYTHING OF THAT TYPE, WITH MR. BOEKEN.
6 DO YOU REMEMBER THAT QUESTION?
7 A. YES, I DO.
8 Q. AND YOUR ANSWER WAS NO?
9 A. CORRECT.
10 Q. AND THEN YOU WERE ASKED, DO YOU
11 WORK WITH MR. BOEKEN IN ORDER TO DEVELOP OIL AND
12 GAS PROPERTIES, AND, AGAIN, YOUR ANSWER WAS "NO"
13 WASN'T IT?
14 A. CORRECT.
15 Q. SO YOU ARE NOT SAYING HERE TODAY
16 THEN THAT YOU WORKED WITH MR. BOEKEN IN DEVELOPING
17 ANY OIL AND GAS PROPERTIES?
18 A. NO. WHAT I AM SAYING IS, WE DO NOT
19 WORK TOGETHER, AT THE SAME COMPANY, DEVELOPING OIL
20 AND GAS PROPERTIES. WE MAY GO DOWN AND LOOK AT
21 WELLS AND HE MAY -- HE MAKES HIS DECISION
22 INDEPENDENTLY THAN I DO. HE MAY CHOOSE A DIFFERENT
23 GROUP OF WELLS THAN I DO.
24 SO WE WILL GO DOWN, WE MAY TAKE THE
25 TRIP TOGETHER, TO LOOK AT A GROUP OF WELLS, HE MAY
26 END UP TAKING A DIFFERENT SET THAN I WOULD, BASED
27 ON WHAT HE IS LOOKING AT AND BASED ON WHAT I AM
28 LOOKING AT.
3316
1 SO WE TRAVEL TOGETHER BUT THE
2 DECISIONS ARE MADE INDEPENDENTLY, PER EACH COMPANY.
3 Q. AND THEY ARE SEPARATE BUSINESS
4 DEALS; RIGHT?
5 A. THAT IS CORRECT.
6 Q. NOW, LET ME JUST HAVE A MOMENT
7 HERE.
8 AND DO YOU RECALL BEING QUESTIONED
9 ABOUT THIS AT YOUR DEPOSITION, ABOUT YOUR BUSINESS
10 DISCUSSIONS WITH MR. BOEKEN?
11 A. YES.
12 Q. ACTUALLY, HAVE YOU HEARD OF NOVA
13 L.L.C.?
14 A. YES.

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

Q. AND WHAT IS THAT?
A. I BELIEVE THAT'S MR. BOEKEN'S COMPANY.
Q. THAT'S THE COMPANY THAT SUCCEEDED ENEX?
A. I BELIEVE SO.
Q. AND AT ONE -- SO NOVA L.L.C., TO YOUR UNDERSTANDING, DOES THE SAME BUSINESS, THIS PACKAGING OF OIL AND GAS RESOURCES?
A. YES.
Q. AND THAT'S WHAT YOUR BUSINESS DOES; RIGHT?
A. YES.
Q. AND YOU WERE ASKED AT YOUR

3317

DEPOSITION, WHICH OF YOUR TWO COMPANIES, HIGH MARK OR NOVA, HAD THE LARGER REVENUES; RIGHT?
A. CORRECT.
Q. AND YOU DON'T KNOW, ISN'T THAT TRUE?
A. WELL, I BELIEVE I WAS ASKED WHAT KIND OF INCOME MR. BOEKEN MADE, AND I SAID I REALLY DO NOT KNOW THE AMOUNT OF HIS INCOME.
Q. WEREN'T YOU ASKED: "DO YOU KNOW WHICH COMPANY HAS LARGER REVENUES?" AND YOU SAID, "I DON'T."
"WOULD YOU BE ABLE TO ESTIMATE"? AND YOU SAID, "NO."
A. OKAY.
Q. AND THEN, YOU WERE ASKED WHETHER YOU EVER DISCUSSED WITH MR. BOEKEN ANY OF THE TRANSACTIONS THAT HE OR HIS COMPANY WERE INVOLVED IN. DO YOU REMEMBER THAT?
A. YES.
Q. AND YOU SAID YOU DID DISCUSS THOSE FROM TIME TO TIME?
A. YES.
Q. ACTUALLY, WHAT YOU SAID WAS, "I MEAN, FROM TIME TO TIME, WE DISCUSSED, YOU KNOW, SEVERAL THINGS," WASN'T THAT YOUR ANSWER?
A. YES.
Q. AND YOU WERE ASKED THEN SUCH AS, "CAN YOU ELABORATE," AND YOU SAID, "YOU KNOW,

3318

THINGS HE MAY HAVE BEEN WORKING ON IN THE PAST OR, YOU KNOW." THAT'S WHAT YOU SAID?
A. YES.
Q. AND THEN DID YOU GO ON TO EXPLAIN MORE SPECIFICALLY WHAT YOU MEANT BY THAT?
A. I DON'T RECALL.
Q. DIDN'T YOU SAY, JUST SIMPLE CONVERSATIONS, HOW ARE THINGS GOING, YOU KNOW, YOU KNOW, WHAT ARE YOU WORKING ON, AND THAT'S, BASICALLY, THE EXTENT OF IT?
A. YES.
Q. WOULD YOU CHARACTERIZE THESE INVESTMENTS, THESE OIL AND GAS INVESTMENTS AS SURE THINGS?
A. NOT ANY MORE THAN STOCKS OR ANY OR INVESTMENT.
Q. IS IT SOMETIMES THE CASE THAT THESE OIL WELLS JUST DON'T COME IN?
A. YES.

http://legacy.library.ucsf.edu/tid/whp07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

Q. OR THEY DON'T PAN OUT LIKE
EXPECTED?
A. YES.
Q. SO SOMETIMES INVESTORS IN THESE
PROJECTS WILL LOSE MONEY; RIGHT?
A. YES.
Q. WOULD YOU CHARACTERIZE THESE AS A
HIGH RISK INVESTMENT IN THAT RESPECT?
A. IN THAT RESPECT, YES.
3319
Q. DO YOU RECALL EVER, DO YOU RECALL
MR. BOEKEN EVER TELLING YOU THAT HE NEEDED TO TRY
HARDER TO QUIT SMOKING?
A. I REMEMBER -- I RECALL HIM TELLING
ME HE WAS TRYING TO QUIT.
Q. DO YOU RECALL EVER TELLING HIM THAT
HE NEEDED TO TRY HARDER?
A. I DON'T KNOW IF I SPECIFICALLY SAID
"TRY HARDER." I TOLD HIM THAT HE SHOULD STOP
SMOKING.
Q. IN YOUR DEPO, YOU WERE ASKED, "TELL
ME WHAT WAS TYPICALLY SAID IN ONE OF THOSE
DISCUSSIONS."
AND YOUR ANSWER WAS, "IF WE WERE
HAVING A CASUAL CONVERSATION, HE LIGHTS UP A
CIGARETTE, I TOLD HIM, 'YOU TOLD ME YOU WERE GOING
TO QUIT.' HE SAID, 'I AM TRYING.' I SAID, 'WELL,
YOU NEED TO TRY HARDER.' HE SAYS, 'I KNOW.'
THAT WAS YOUR TESTIMONY?
A. YES.
MR. CARLTON: AND THAT DOES IT FOR ME,
THANK YOU.
THE COURT: NOTHING FURTHER?
SIR, YOU MAY STEP DOWN. YOU ARE
EXCUSED AS A WITNESSES.
MR. PIUZE: I AM GOING TO CALL JUDY
BOEKEN AS THE NEXT WITNESS.
THE COURT: MA'AM, IF YOU WOULD PLEASE
3320
STEP FORWARD. JUST INTO THIS AREA OVER HERE.
IF YOU WOULD, PLEASE FACE MY CLERK,
RAISE YOUR RIGHT HAND AND BE SWORN AS A WITNESS IN
THIS MATTER.

JUDY BOEKEN,
CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN
AND TESTIFIED AS FOLLOWS:
THE CLERK: YOU DO SOLEMNLY STATE THE
TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING
BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE
TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.
THE WITNESS: I DO.
THE CLERK: HAVE A SEAT.
FOR OUR RECORD, IF YOU COULD JUST
STATE YOUR FIRST AND LAST NAME PLEASE.
THE WITNESS: JUDY BROKEN.
THE CLERK: THANK YOU VERY MUCH.

DIRECT EXAMINATION

BY MR. PIUZE:
Q. HI. HOW ARE YOU DOING?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

25 A. OH, HI. I AM OKAY.
26 Q. WOULD YOU TELL THE JURY WHO THIS
27 PERSON IS?
28 A. MY HUSBAND, RICK BROKEN.
3321
1 Q. OKAY.
2 HOW LONG HAS HE BEEN YOUR HUSBAND?
3 A. 20 YEARS. WE WERE MARRIED JANUARY
4 5TH, 1981.
5 Q. OKAY. WHEN DID YOU FIRST MEET
6 MR. BOEKEN?
7 A. WE MET IN 1977. WE MET IN
8 ALCOHOLICS ANONYMOUS AT A MEETING.
9 Q. WHAT WERE YOU DOING THERE?
10 A. I HAD GONE TO A.A. TO GET CLEAN AND
11 SOBER.
12 Q. AT THE TIME YOU MET MR. BOEKEN,
13 WERE YOU?
14 A. YES, I WAS.
15 Q. WHAT WAS HE DOING THERE?
16 A. HE HAD COME TO GET CLEAN AND SOBER
17 ALSO.
18 Q. AND AT THE TIME YOU MET HIM, WAS
19 HE?
20 A. YES.
21 Q. IS THERE SOME KIND OF EITHER A
22 GRADUATION OR SOME KIND OF A CEREMONY THAT AFTER
23 SOMEONE WHO HAS GONE TO A.A. HAS BEEN CLEAN AND
24 SOBER FOR "X," I DON'T KNOW WHETHER IT IS A DAY, A
25 MONTH, A YEAR, THAT SOMETHING HAPPENS, IT'S LIKE A
26 GRADUATION OR A CEREMONY OR SOMETHING?
27 A. YOU NEVER GRADUATE. BUT YOU GET
28 CHIPS, 30 DAYS, 60 DAYS, 90 DAYS, AND THEN MAYBE
3322
1 SIX MONTHS. AND THEN AT A YEAR, AND EVERY YEAR,
2 YOU HAVE A BIRTHDAY, A BIRTHDAY.
3 Q. WHEN YOU MET MR. BOEKEN, HAD YOU
4 HAD YOUR BIRTHDAY YET?
5 A. NO.
6 Q. WHEN HE, WHEN YOU MET HIM, HAD HE
7 HAD HIS BIRTHDAY YET?
8 A. NO.
9 Q. SO BOTH OF YOU HAD NOT YET BEEN
10 CLEAN AND SOBER FOR A YEAR, AT THE TIME YOU MET?
11 A. NO.
12 Q. IS THAT A TRUE STATEMENT THAT I
13 SAID?
14 A. YES. WE MET ABOUT THREE MONTHS
15 BEFORE OUR FIRST BIRTHDAY.
16 Q. DID YOU START OUT IN THE SAME A.A.
17 PLACE AT THE SAME TIME?
18 A. NO. I LIVED ON THE WEST SIDE AND
19 RICK LIVED IN THE VALLEY. AND I JUST HAPPENED TO
20 TAKE, I HAD A DAY OFF FROM WORK AND I HAD HEARD
21 THAT THERE WAS THIS GOOD MEETING IN THE VALLEY
22 WHERE AT NOON TIME -- MY CHILDREN WERE IN SCHOOL,
23 WHERE THERE WERE A LOT OF OLD-TIMERS THAT WENT,
24 OLD-TIMERS BEING PEOPLE IN THE A.A. A LONG TIME
25 THAT YOU COULD LEARN FROM. SO I DECIDED TO TAKE A
26 RIDE OUT TO THE VALLEY AND SEE THIS MEETING AND
27 THAT'S WHERE I MET RICK.
28 Q. THANKS.
3323

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Support https://www.industrydocuments.ucsf.edu/docs/nnxl0001

A COUPLE OF ANSWERS AGO YOU SAID
YOU NEVER GRADUATE. DO YOU REMEMBER THAT?
A. YES.
Q. WHAT DOES THAT MEAN?
A. YOU -- WHEN YOU GO TO A.A., AND YOU
LEARN THE PROGRAM FROM THE ALCOHOLICS ANONYMOUS
BOOK AND FROM THE OTHER MEMBERS WHO ARE THERE
BEFORE -- WHO HAVE COME BEFORE YOU, YOU HAVE TO
CONTINUE TO DO THE THINGS YOU HAVE LEARNED A DAY AT
A TIME, YOU KNOW, EVERYBODY HAS HEARD THAT PHRASE,
YOU HAVE TO CONTINUE, IN ORDER TO MAINTAIN YOUR
SOBRIETY, YOU HAVE TO CONTINUE TO LIVE A CERTAIN
WAY THAT YOU HAVE LEARNED.
Q. OKAY. SINCE YOU HAVE KNOWN
MR. BOEKEN, HAVE YOU EVER SEEN HIM TAKE A DRINK?
A. NO.
Q. SINCE YOU HAVE KNOWN MR. BOEKEN,
THIS IS A PERSONAL QUESTION, HAVE YOU TAKEN A
DRINK?
A. NO.
Q. SINCE YOU HAVE KNOWN MR. BOEKEN,
HAVE YOU EVER SEEN HIM TAKE ANY KINDS OF A DRUG
OTHER THAN WHAT A DOCTOR MAY HAVE PRESCRIBED OR
WHAT HE MIGHT HAVE GOTTEN OVER THE COUNTER AT A
DRUG STORE?
A. NO.
Q. AND SINCE YOU HAVE KNOWN
MR. BOEKEN, HAVE YOU EVER TAKEN ANY KIND OF A DRUG
3324
OTHER THAN WHAT'S BEEN PRESCRIBED OR YOU GET OVER
THE COUNTER AT A DRUG STORE?
A. NO.
Q. DO YOU SMOKE?
A. YES.
Q. WHAT DO YOU SMOKE?
A. MARLBORO RED 100'S.
Q. HOW LONG HAVE YOU SMOKED?
A. I HAVE SMOKED SINCE I WAS 17.
Q. WHAT HAVE YOU SMOKED SINCE YOU WERE
17?
A. THE DAY I STARTED, THE DAY I HAD
THE FIRST CIGARETTE, I THINK IT WAS A TERRINGTON,
SOMEONE ELSE GAVE IT TO ME. BUT THEN I WAS
IMMEDIATELY A SMOKER AND IMMEDIATELY STARTED
SMOKING MARLBORO RED, SHORT ONES.
Q. WHETHER SHORT OR LONG, I DON'T
CARE, BUT HAVE YOU BEEN A MARLBORO SMOKER EVER
SINCE?
A. YES.
Q. SO I ASKED YOU IF YOU HAD TAKEN ANY
KIND OF DRUGS SINCE YOU MET MR. BOEKEN, OTHER THAN
WHAT YOU GET FROM THE DOCTOR OR WHAT YOU CAN GET
OVER THE COUNTER IN A DRUG STORE, AND YOU SAID NO.
AND NOW I AM ASKING YOU, WHAT ABOUT CIGARETTES?
A. IF THEY HAD TOLD ME WHEN I WENT TO
A.A. THAT ALONG WITH NOT TAKING COUGH MEDICINES
THAT CONTAINED ALCOHOL, THINGS LIKE THAT, IF THEY
3325
HAD TOLD ME CIGARETTES, IF THEY HAD TOLD ME IN
1976, 1977, WHEN I WENT, THAT CIGARETTES ARE A
DRUG, THEY ARE ADDICTING TO THAT TOO, YOU HAVE TO
STOP THAT TOO, ALONG WITH THE ALCOHOL AND OTHER
DRUGS YOU HAVE TAKEN, THEN I WOULD HAVE KNOWN THAT

http://legacy.library.ucsf.edu/tid/whtp07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

6 IT WAS A DRUG.
7 Q. OKAY.
8 LET'S SWITCH TO YOUR HUSBAND.
9 LET'S STAY WITH YOU FOR A MINUTE.
10 HOW MUCH DO YOU SMOKE?
11 A. ABOUT A PACK A DAY, THESE DAYS.
12 Q. THESE DAYS?
13 A. YEAH.
14 Q. HOW ABOUT BEFORE THESE DAYS, HOW
15 MUCH DID YOU SMOKE?
16 A. MOST OF THE TIME I HAVE PROBABLY BE
17 A TWO PACK A DAY SMOKER.
18 Q. WAS THERE A TIME WHEN YOU CUT WAY
19 DOWN TO LIKE FIVE CIGARETTES A DAY OR SOMETHING
20 LIKE THAT?
21 A. NO.
22 Q. WHAT ABOUT AFTER YOUR HUSBAND GOT
23 DIAGNOSED?
24 A. I TRIED TO STOP SMOKING RIGHT AWAY.
25 I PUT ON THE PATCH, BUT IT DIDN'T WORK. I COULDN'T
26 STAY STOPPED.
27 Q. WHY NOT?
28 A. I WAS TOO NERVOUS, ANXIOUS,
3326
1 FEARFUL.
2 Q. DID YOU CUT BACK?
3 A. I HAVE CUT BACK BECAUSE I DON'T
4 WANT TO SMOKE AROUND MY CHILD, FOR INSTANCE. SO,
5 LIKE, CIRCUMSTANCES FORCE ME TO CUT BACK. YOU
6 KNOW, I DON'T WANT TO SMOKE IN A CLOSED CAR WITH MY
7 SON IN THE CAR.
8 I DON'T WANT TO SMOKE EITHER IN HIS
9 FACE, IN THE SAME ROOM. HE KNOWS WHAT'S GOING ON.
10 I FEEL EMBARRASSED THAT I SMOKE
11 WITH WHAT'S GOING ON, THAT NOW I KNOW BETTER, BUT
12 THAT I NEED TO SMOKE.
13 Q. WHAT DO YOU MEAN, YOU NEED TO
14 SMOKE?
15 A. FOR MY NERVES, BECAUSE OF
16 EVERYTHING WE ARE GOING THROUGH, WE PUT OUR HOUSE
17 UP FOR SALE. IT'S NOT SELLING --
18 Q. WELL, LET ME STOP YOU, BECAUSE I
19 DON'T REALLY WANT TO GET INTO THAT.
20 A. OKAY.
21 Q. RIGHT NOW, ANYWAY. AND MAY BE
22 NEVER.
23 BUT NOT SPECIFIC, OF COURSE, BUT
24 WHY DO YOU NEED TO SMOKE.
25 MR. LEITER: OBJECTION, RELEVANCE.
26 THE COURT: OVERRULED.
27 THE WITNESS: I CRAVE THE CIGARETTE FOR,
28 OUT OF HABIT, TO HAVE IT TO TRY TO CALM ME DOWN, TO
3327
1 FOCUS, TO TRY AND FOCUS, TO EVEN TO TRY TO
2 CONCENTRATE TO DO SOMETHING LIKE WRITE THE BILLS.
3 Q. LET'S CHOSE ANOTHER TOPIC FOR A
4 WHILE.
5 WHEN YOU MET MR. BOEKEN, WAS HE
6 SMOKING?
7 A. YES.
8 Q. WHAT?
9 A. MARLBORO RED.
10 Q. ASIDE FROM -- THIS QUESTION GOES UP

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

UNTIL THE TIME HE WAS DIAGNOSED WITH LUNG CANCER, OKAY. IT STOPS AT THE TIME HE WAS DIAGNOSED WITH LUNG CANCER. UP UNTIL THE TIME HE WAS DIAGNOSED, DID YOU EVER KNOW HIM TO STOP SMOKING FOR MORE THAN, LET'S SAY, A MONTH OR SO AT A TIME?
A. NO.
Q. UP UNTIL THE TIME HE WAS DIAGNOSED, DID YOU KNOW HE TRIED TO STOP SMOKING NUMEROUS TIMES?
A. YES.
Q. TYPICALLY, IF THERE IS A, TYPICALLY, IF THERE ISN'T, YOU TELL ME, BUT TYPICALLY, HOW LONG WOULD IT LAST THAT HE DID NOT SMOKE, AT LEAST FROM WHAT YOU COULD OBSERVE?
A. A DAY, TWO DAYS, THREE DAYS, THAT WOULD BE IT.
Q. HAVE YOU SEEN HIM USE THE PATCH?
A. OH, YES.

3328

Q. BEFORE HE WAS DIAGNOSED?
A. YES.
Q. DO YOU SEE HIM USE GUM?
A. YES.
Q. IS A.A. A 12-STEP PROGRAM?
A. YES.
Q. ARE THERE OTHER PROGRAMS AROUND THAT ARE BASED ON THE 12-STEP A.A. PROGRAM?
A. YES.
Q. IS ONE OF THEM SOMETHING CALLED SMOKERS ANONYMOUS?
A. YES.
Q. HAVE YOU EVER BEEN THERE?
A. YES, I HAVE.
Q. HAVE YOU GONE WITH YOUR HUSBAND?
A. YES.
Q. HAS THIS BEEN ON ONE OCCASION, MORE THAN ONE OCCASION?
A. THERE WERE TWO DIFFERENT TIMES, LATE '80'S, MID TO LATE '80'S, THAT WE WENT TOGETHER, A COUPLE TIMES WE, FOR A FEW MONTHS, EACH TIME, MAYBE A MONTH EACH TIME, AND -- BUT I DIDN'T STOP SMOKING, COULDN'T STOP.
Q. WELL, IF YOU WERE SMOKING, THEY WOULDN'T LET YOU STAY IN THOSE MEETINGS, WOULD THEY?
A. THE 12-STEP PROGRAMS LET YOU COME AND THEN DIFFERENT PROGRAMS HAVE DIFFERENT RULES.

3329

AT SMOKERS' ANONYMOUS YOU CAN'T PARTICIPATE, YOU CAN'T SHARE, TALK UNLESS YOU ARE OFF NICOTINE.
Q. SO LET ME BACK YOU AWAY FROM THAT AND JUST USE ALCOHOL AS A BASELINE AND THEN WE WILL GO TO SMOKING.
PEOPLE CAN'T GO TO A.A. MEETINGS -- CAN PEOPLE GO TO A.A. MEETINGS IF THEY ARE STILL DRINKING?
A. YES.
Q. CAN PEOPLE GET UP AND TALK AND SHARE THEIR EXPERIENCE AT A.A. MEETINGS IF THEY ARE STILL DRINKING?
A. NO. PREFERABLY, IT'S PREFERRED THAT THEY DON'T. SOMETIMES WE DON'T KNOW, I MEAN, SOMETIMES NOBODY KNOWS IF THEY HAVE DRANK AND THEY

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

16 WILL GET UP THERE AND THEN MAYBE WE CAN TELL AND WE
17 WILL ASK THEM TO SIT DOWN.
18 Q. BUT THE PREFERRED WAY OF DOING IT
19 IS, I AM USING THE WORD TALKING, YOU USE THE WORD
20 SHARE, IS IT THE SAME THING, GETTING UP, TALKING
21 ABOUT YOUR EXPERIENCE?
22 A. YES.
23 Q. IF YOU GET UP TO SHARE, YOU ARE NOT
24 SUPPOSED TO BE DRINKING; IS THAT RIGHT?
25 A. RIGHT.
26 Q. LET'S GO TO SMOKERS ANONYMOUS.
27 IF YOU GET UP TO SHARE, YOU ARE NOT
28 SUPPOSED TO BE SMOKING?
3330
1 A. NO.
2 Q. THAT'S TRUE?
3 A. THAT'S TRUE.
4 Q. WHEN YOU WENT TO SMOKERS ANONYMOUS,
5 DID EITHER YOU OR YOUR HUSBAND, MR. BOEKEN, GET UP
6 AND SHARE?
7 A. NO.
8 Q. IS THAT BECAUSE YOU DIDN'T EVEN
9 KNOW YOU WERE GOING TO THE MEETINGS, YOU WERE BOTH
10 STILL SMOKING?
11 A. YES.
12 Q. ASIDE FROM TIMES WHEN YOU HAVE SEEN
13 HIM TRY TO QUIT OVER THE YEARS, HAS HE ALWAYS,
14 ALWAYS SHORT-LIVED, AS HE ALWAYS SMOKED SINCE YOU
15 HAVE KNOWN HIM, UP UNTIL THE TIME HE GOT DIAGNOSED?
16 A. YES.
17 Q. AS MUCH AS YOU, MORE THAN YOU, LESS
18 THAN YOU?
19 A. MUCH -- MORE, MORE THAN ME.
20 Q. WHEN YOU STARTED TO SAY "MUCH," IS
21 IT MUCH MORE THAN YOU?
22 A. YEAH.
23 Q. WOULD YOU CONSIDER YOUR HUSBAND,
24 BEFORE HE WAS DIAGNOSED WITH LUNG CANCER, TO BE A
25 HEAVY SMOKER?
26 A. YES.
27 Q. AT ALL TIMES SINCE YOU KNEW HIM?
28 A. YES.
3331
1 Q. LEAVING ASIDE THESE QUIT ATTEMPTS.
2 A. YES.
3 Q. NOW, I ASKED YOU IF YOU EVER SAW
4 YOUR HUSBAND TAKE A DRINK OR USE ANY DRUG THAT YOU
5 COULDN'T GET WITH A PRESCRIPTION OR OVER THE
6 COUNTER AT A DRUG SORE, YOU SAID NO.
7 WHAT ABOUT CIGARETTES?
8 A. YES, I SAW HIM SMOKE.
9 Q. SO TELL ME THE YEAR YOU MET HIM
10 AGAIN.
11 A. '77.
12 Q. DESCRIBE HIM IN 1977.
13 I KNOW YOU MARRIED HIM, SO I GUESS
14 YOU MUST HAVE LIKED THE WAY HE LOOKED.
15 A. HE'S VERY HANDSOME AND HE WAS IN,
16 HE HAD -- HE WAS DOING CONSTRUCTION. HE HAD COME
17 TO A.A. HAVING LOST EVERYTHING, SO HE WORKED FOR
18 SOMEONE ELSE FIRST, LEARNING CONSTRUCTION TRADE AND
19 THEN HE STARTED HIS OWN, WHEN HE LEARNED, AND HE
20 STARTED HIS OWN, HIS OWN BUSINESS, AND SO HE WAS,

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

HE LOOKED IN GOOD HEALTH BECAUSE HE DID PHYSICAL
WORK AND HE WORKED OUTDOORS A LOT OF THE TIME, SO
HE WAS TAN, AND HE WAS VERY HANDSOME.
Q. DO YOU KNOW WHO THE MARLBORO MAN
IS?
A. YEAH.
Q. HAVE THERE BEEN OCCASIONS WHEN YOU
HAVE SHARED THAT NAME WITH HIM?
3332
A. YEAH. I HAVE THOUGHT THAT HE
LOOKED LIKE THE MARLBORO MAN AND THAT WAS THE KIND
OF MAN I WAS ATTRACTED TO. AND I LITERALLY CALLED
HIM MY MARLBORO MAN, NOT REALIZING THAT IT WAS SORT
OF, NOW, I WOULD THINK OF IT AS A SICK THING BUT HE
HAD THAT RUGGED FACE, SQUARE JAW THAT I SAW ON THE
BILLBOARDS. AND YEAH, ACTUALLY, I CALLED HIM MY
MARLBORO MAN.
MR. PIUZE: YOUR HONOR, CAN I CALL TIME
OUT FOR THE AFTERNOON HERE.
THE COURT: YES. I DIDN'T KNOW EXACTLY
WHEN THE APPROPRIATE TIME WOULD BE.
LADIES AND GENTLEMEN, 5 AFTER 3:00,
PLEASE. DON'T DISCUSS THE CASE WITH ANYONE.

(AT THIS TIME, A RECESS
WAS TAKEN.)

(THE FOLLOWING PROCEEDINGS
WERE HELD IN OPEN COURT IN
THE PRESENCE OF THE JURY.)

THE COURT: MA'AM, YOU UNDERSTAND YOU ARE
STILL UNDER OATH.
THE WITNESS: YES.

JUDY BOEKEN,
3333
CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN
PREVIOUSLY DULY SWORN, RESUMED THE WITNESS STAND
AND TESTIFIED FURTHER AS FOLLOWS:

DIRECT EXAMINATION (RESUMED)

BY MR. PIUZE:
Q. I ASK THE QUESTIONS.
SO WHEN DID YOU STOP CALLING
MR. BOEKEN THE MARLBORO MAN OR YOUR MARLBORO MAN,
WHEN WAS THAT?
A. WELL, THAT WAS PROBABLY JUST LIKE,
WHILE WE WERE DATING AND IN OUR EARLY MARRIAGE,
PART OF OUR MARRIAGE.
Q. A LONG TIME AGO?
A. YES.
Q. AND THE REASON YOU CALLED HIM YOUR
MARLBORO MAN WAS BECAUSE YOU THOUGHT HE WAS GOOD
LOOKING AND TOUGH AND HEALTHY?
A. HE HAD THAT RUGGED LOOK AND, THE
MACHO LOOK.
Q. ALL RIGHT. WHEN YOU MET YOUR
HUSBAND TO BE, AND YOU WERE WORKING ON YOUR FIRST
BIRTHDAY, HOW OFTEN DID YOU GO TO A.A. MEETINGS?
A. ONCE OR TWICE A DAY.

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

26 Q. HOW OFTEN DO YOU GO TO A.A.
27 MEETINGS NOW?
28 A. NOT AS OFTEN, MAYBE ONCE A MONTH.
3334
1 Q. HOW LONG HAS IT BEEN SINCE YOU HAVE
2 GONE TO A.A. MEETINGS REGULARLY?
3 A. I HAVE ALWAYS GONE REGULARLY BUT
4 AFTER MY HUSBAND AND I WERE MARRIED AND I HAD TWO
5 SONS BY A PRIOR MARRIAGE, AS TIME GOES BY, YOU
6 BECOME MORE WELL. YOU BECOME A PERSON YOU HAVE
7 NEVER BEEN BEFORE. THE MEETINGS WORK. RICK ALSO
8 WENT TO SEVERAL MEETINGS, A DAY, EVERY DAY. WE
9 WERE TOLD, WE HEARD THINGS LIKE IF YOU GO TO TWO
10 MEETINGS A DAY FOR THE FIRST FIVE YEARS, YOU MIGHT
11 MAKE IT.
12 WE BOTH HAD TOUGH SPONSORS, WE BOTH
13 SPONSORED OTHER PEOPLE. WE WERE VERY ACTIVE IN THE
14 PROGRAM, GOING TO MEETINGS, SPONSORING PEOPLE,
15 PARTICIPATE, DOING SERVICE.
16 AND THEN YOU GET MORE WELL AND IF
17 YOU HAVE CHILDREN, THEN YOUR LIFE, THE FOCUS
18 CHANGES AND YOU THEN ARE WELL ENOUGH TO GO TO
19 BACK-TO-SCHOOL NIGHT, OPEN HOUSE AT NIGHT, HELP
20 YOUR CHILDREN WITH THEIR HOMEWORK.
21 Q. YOU MEAN DOING THESE THINGS INSTEAD
22 OF BEING AT AN A.A. MEETING?
23 A. RIGHT.
24 AND RICK WASN'T, ISN'T THE TYPE
25 THAT, THEY ARE YOUR KIDS, THEY ARE YOUR PROBLEM,
26 LEAVE ME HOME WITH THEM.
27 HE BECAME LIKE, AS THEIR FATHER.
28 AND WE BECAME A TYPICAL FAMILY AS FAR AS KIDS CAME
3335
1 HOME FROM SCHOOL, THEY CAME IN FROM PLAYING AT
2 5:00, SAT DOWN TO DO THEIR HOMEWORK AT THE KITCHEN
3 TABLE, WHILE I COOKED DINNER, RICK COULD HELP THEM
4 WITH THE MATH AND SCIENCE AND I COULD HELP THEM
5 WITH THE READING AND SPELLING.
6 AND THEN WHEN WE WOULD HAVE DINNER
7 AND DINNER WAS OVER AND THEY FINISHED THEIR
8 HOMEWORK, WATCH A LITTLE T.V. AND THEN GO TO BED.
9 AND SO WE BECAME A FAMILY AND RICK WOULD GO TO
10 MEETINGS, WORKED FOR HIMSELF. HE COULD GO AT
11 LUNCHTIME. HE WOULD STOP IN AT A MEETING OR HE
12 COULD GO BEFORE WORK. THERE'S VERY EARLY MEETINGS,
13 AND I WOULD GO WHILE THE CHILDREN WERE IN SCHOOL.
14 AND SO, BECAUSE THAT'S NOON
15 MEETINGS, AND THAT WOULD -- SO WE WOULD GET OUR
16 MEETINGS IN THAT WAY AND DO THE TOTAL FAMILY THING
17 IN THAT WAY.
18 Q. OKAY.
19 A. THAT WAS THE WAY WE DID IT AT
20 NIGHT.
21 Q. SO. THANKS. PART OF THAT ANSWER
22 WAS THAT YOU WERE TOLD THAT FOR THE FIRST FIVE
23 YEARS YOU BETTER BE GOING TWICE A DAY IF YOU GOT
24 ANY CHANCE OF MAKING IT.
25 DID YOU DO THAT?
26 A. OH, YEAH.
27 Q. DID HE DO THAT?
28 A. YES, HE DID.
3336
1 Q. DID YOU DRAG YOUR KIDS ALONG

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

2 SOMETIMES?
3 A. OH, YEAH. THEY SAT AT MY FEET.
4 REMEMBER.
5 Q. IS THERE SOMETHING LIKE, IF THERE'S
6 A BIRTHDAY PARTY AFTER A YEAR, IS THERE A MAGIC
7 YEAR WHEN, YOU KNOW, WHETHER IT'S FIVE YEARS, TEN
8 YEARS, 20 YEARS, WHEN YOU ARE SORT OF THOUGHT TO BE
9 OVER THE HUMP AND THEN YOU DON'T HAVE TO GO SO
10 OFTEN ANY MORE OR IS THAT AN INDIVIDUAL KIND OF
11 THING?
12 A. IT'S DEFINITELY INDIVIDUAL.
13 IT'S IN THE BOOK, ALCOHOLICS
14 ANONYMOUS, TALKS ABOUT IF YOU ARE ALONE, HOW LUCKY
15 YOU ARE TO HAVE THE PROGRAM AND TO BE OF SERVICE.
16 AND I MEAN, EVEN IN MY MIND, BEING REMARRIED, YOU
17 KNOW, HAS ALWAYS BEEN A COMFORT TO ME THAT IF I WAS
18 ALONE, THAT THEY WERE ALWAYS THERE. I KNOW WHERE
19 THEY ARE, MORNING, NOON AND NIGHT, I HAVE THE
20 DIRECTORY.
21 I RUN INTO OLD FRIENDS. AND IT'S
22 LIKE NO TIME -- YOU KNOW, JUST IN THE COURSE OF
23 LIFE. AND IT'S AS IF NO TIME HAS GONE BY. AND I
24 FEEL THAT THEY ARE MY FAMILY. IT'S LIKE A FAMILY
25 AND A HOME IN ALL THESE DIFFERENT LOCATIONS ALL
26 OVER THE CITY THAT I COULD GO TO. IT'S VERY
27 COMFORTING TO KNOW THAT.
28 Q. ALL RIGHT.
3337
1 SO THERE YOU ARE, TWICE A DAY AT
2 ALCOHOLICS ANONYMOUS, AND THOSE MEETINGS WERE
3 SMOKE-FREE, WEREN'T THEY?
4 A. NO. NOT AT THE BEGINNING.
5 EVERYONE -- EVERYONE SMOKED IN THE
6 MEETINGS. THE MAJORITY OF THE PEOPLE SMOKE IN THE
7 MEETINGS. YOU WERE STILL ALLOWED TO SMOKE IN
8 BUILDINGS, PUBLIC BUILDINGS, CHURCHES, SYNAGOGUES,
9 ALL THESE PLACES WHERE MEETINGS ARE HELD, MEETING
10 ROOMS IN BANKS, YOU WERE ALLOWED TO SMOKE IN THOSE
11 ROOMS.
12 Q. SO LET'S JUST KEEP THE QUESTIONING
13 TO WHEN IT WAS LEGAL TO SMOKE INSIDE.
14 A. UH-HUH.
15 Q. OKAY?
16 WELL, LET'S NOT.
17 WHEN IT WASN'T LEGAL TO SMOKE
18 INSIDE ANY MORE AT ALCOHOLICS ANONYMOUS MEETINGS,
19 WERE PEOPLE TAKING BREAKS TO GO OUTSIDE AND SMOKE
20 CIGARETTES?
21 A. YEAH. WE STARTED TO FIND THE LARGE
22 SIZE COFFEE CANS FILLED WITH SAND AND PEOPLE WOULD
23 SMOKE OUTSIDE THE MEETINGS.
24 SOME MEETINGS EVEN HAD, I AM
25 THINKING OF ONE PARTICULAR MEETING, 26TH AND
26 BROADWAY HAS ON AN OUTSIDE PATIO, IT'S LIKE AN OLD
27 HOUSE AND THERE'S A PORCH AROUND IT. THEY EVEN PUT
28 SPEAKERS IN PLACES SO THAT THE PEOPLE OUTSIDE COULD
3338
1 HEAR THE MEETING AND THE WINDOWS WOULD BE OPEN SO
2 YOU COULD SEE THE SPEAKER AND SO THERE'S PEOPLE WHO
3 COULD ACTUALLY HEAR THE MEETING FROM THE OUTSIDE.
4 Q. AND THEY WERE OUTSIDE SO THEY COULD
5 SMOKE?
6 A. YEAH.

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Digitized by http://industrydocuments.ucsf.edu/docs/nnxl0001

7 Q. SO WHETHER IT'S INSIDE WHEN SMOKING
8 WAS LEGAL IN PUBLIC BUILDINGS OR WHETHER IT'S
9 OUTSIDE AFTERWARDS, YOU, AS AN ALCOHOLIC, WHO
10 NEEDED TO GO AT LEAST TWICE A DAY FOR FIVE YEARS IF
11 YOU ARE GOING TO HAVE ANY CHANCE OF SUCCESS, DIDN'T
12 YOU THINK IT WAS A LITTLE WEIRD THAT EVERYONE WAS
13 SMOKING CIGARETTES?
14 A. NO. NO. BECAUSE WE WERE NEVER
15 TOLD THAT, EVEN THOUGH WHEN WE WENT TO A.A. WE WERE
16 TOLD, YOU ARE NOT JUST OFF ALCOHOL, YOU ARE OFF ALL
17 DRUGS, SOME -- WE DIDN'T KNOW IT WAS A DRUG AND IT
18 DIDN'T COME UP IN THE '70'S.
19 Q. I AM GOING TO MOVE OFF THE SUBJECT
20 BEFORE TOO LONG. LET ME KEEP YOU INDOORS RIGHT
21 NOW. WHEN IT WAS LEGAL TO SMOKE INDOORS, FROM YOUR
22 PERSONAL OBSERVATIONS, WERE MOST ALCOHOLIC
23 ANONYMOUS MEETINGS HELD IN WHAT AMOUNTED TO
24 SMOKE-FILLED ROOMS?
25 A. YES.
26 Q. OKAY, I DON'T KNOW IF I ASKED YOU
27 THIS BUT WHEN IS THE LAST TIME YOU WERE AT A
28 MEETING?
3339
1 A. SINCE RICK HAS BEEN DIAGNOSED, I
2 CAN'T -- THE STEROIDS HAVE CHANGED HIS PERSONALITY.
3 THE TREATMENT, AND HE IS NOT WELL. AND I CAN'T
4 LEAVE HIM WITH MY SON. SO I WOULD SAY SIX MONTHS
5 AGO -- I MEAN -- IT WAS LIKE SIX WEEKS AGO, WAS
6 PROBABLY WHEN I LAST HAD A CHANCE TO GO.
7 Q. ALL RIGHT. THANKS.
8 NOW, LET'S SWITCH TO MR. BOEKEN.
9 HOW LONG HAS IT BEEN SINCE HE HAS
10 ATTENDED A.A. MEETINGS REGULARLY? AND BY THAT, I
11 DON'T NECESSARILY MEAN TWICE A DAY OR MORE, BUT,
12 YOU KNOW, LET'S SAY AT LEAST ONCE A WEEK OR
13 SOMETHING LIKE THAT, HOW LONG HAS THAT BEEN?
14 A. I'D SAY TEN YEARS -- NINE YEARS.
15 Q. OKAY. THANK YOU.
16 CAN YOU RECALL MR. BOEKEN CHANGING
17 CIGARETTE BRANDS WITHIN THE MARLBORO FAMILY FROM
18 ONE COLOR TO ANOTHER COLOR TO ANOTHER COLOR?
19 A. YES.
20 Q. WHAT COLOR IS IT NOW, WHAT'S HE
21 SMOKING NOW?
22 A. A MIXTURE. GOLD.
23 Q. GOLD?
24 A. GOLD.
25 Q. WHAT HAS IT BEEN IN THE PAST?
26 A. IT WAS RED AND THEN GOLD, 100'S,
27 LIGHTS, ULTRA-LIGHTS.
28 Q. UP UNTIL THE TIME HE GOT DIAGNOSED
3340
1 WITH LUNG CANCER, DID HIS CIGARETTE SMOKING OF
2 MARLBOROS SORT OF GO FROM FULL STRENGTH RED TO GOLD
3 TO LIGHT TO ULTRA-LIGHT, OVER A PERIOD OF TIME?
4 A. YES, EXACTLY.
5 Q. AND AT THE TIME THAT HE WAS
6 DIAGNOSED WITH LUNG CANCER, WHICH ONE OF THOSE WAS
7 IT, DO YOU REMEMBER?
8 A. HE WAS SMOKING ULTRA-LIGHTS.
9 Q. ULTRA-LIGHT.
10 AND SOMETIME AFTER THAT, HE WENT
11 BACK TO STRONGER MARLBOROS?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

A. YES.
Q. HOW MUCH IS HE SMOKING NOWADAYS?
A. HE SEEMS TO BE SMOKING MORE THAN
EVER.
Q. OKAY.
OVER THE COURSE OF YEARS, STARTING
FROM WHEN YOU FIRST KNEW MR. BOEKEN, WOULD HE
SOMETIMES GET BRONCHITIS?
A. HE VERY OFTEN GOT BRONCHITIS.
Q. AND WHAT WERE HIS SYMPTOMS?
A. HE COUGHED A LOT, HE HAD CONGESTION
ON HIS CHEST. THE WORST PART WAS THAT HE HAD A LOT
OF PHLEGM. HE HAD A LOT OF IRRITATION ON HIS CHEST
AND A LOT OF PHLEGM THAT HE WOULD SPIT UP AND IT
WAS GREEN, YOU KNOW, HE WAS INFECTED.
Q. OKAY. AND WHEN HE WOULD GET THAT,
WOULD HE GO SEE A DOCTOR?

3341

A. YES.
Q. AND WHEN HE WOULD GET THAT, HE
WOULD STOP SMOKING; RIGHT?
A. NO.
Q. NO.
DID YOU SOMETIMES GET COLDS OR SORE
THROAT OR BRONCHITIS OR STUFF LIKE THAT OVER THE
COURSE OF YEARS?
A. YES.
Q. AND WHEN YOU GOT THAT, YOU'D STOP
SMOKING, WOULDN'T YOU?
A. NO.
Q. UP UNTIL THE TIME THAT MR. BOEKEN
GOT DIAGNOSED WITH LUNG CANCER, DID YOU EVER BUG
HIM TO STOP SMOKING?
A. NO.
Q. DID HE EVER BUG YOU TO STOP
SMOKING?
A. NO.
Q. YOU HAD KIDS, DIDN'T YOU?
A. YES.
Q. DIDN'T THEY BUG YOU TO STOP
SMOKING?
A. MY SON, DAMIEN, WHEN HE -- I THINK
HE WAS, HIS FIRST YEAR OF JUNIOR HIGH, MUST HAVE
BEEN TAKING HEALTH CLASS OR SOMETHING, AND THEY HAD
BEGUN TO MENTION, I THINK, IN HIS CLASSES THAT
BEGAN AT SCHOOL TO CATEGORIZE CIGARETTES AS DRUGS

3342

AND -- YEAH, IT DEFINITELY WAS THAT HE WAS IN A
HEALTH CLASS BECAUSE HE WAS LEARNING DANGERS OF
SMOKING AND SO HE DIDN'T HAVE THE NERVE TO BUG
RICK. BUT HE HAD, YOU KNOW, WITH ME, HE WOULD
TWIST THE PACKAGES OF CIGARETTES AND TOTALLY
DESTROY THEM.
SO HE SAID THINGS TO BOTH OF US
VERY CHILD-LIKE. AND WE VERY PARENT-LIKE,
ADULT-LIKE, WERE REACTED ANGRILY AT HIS DESTROYING
THE CIGARETTES AND BUGGING US. AND SO HE DIDN'T
KEEP THAT UP LIKE FOR YEARS OR ANYTHING LIKE THAT,
YOU KNOW, TALKING ABOUT TWO MONTHS.
Q. WHAT DO YOU MEAN HE DIDN'T HAVE THE
NERVE -- I DIDN'T HEAR EXACTLY WHAT YOU SAID, BUT
IT WAS BASICALLY HE DIDN'T HAVE THE NERVE TO
SOMETHING RICK?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

A. BUG, HE DIDN'T HAVE THE NERVE TO --
HE KNEW -- WHAT I SAID WAS HE DIDN'T HAVE THE NERVE
TO BUG RICK VERY MUCH, VERY STRONGLY.
Q. HE BUGGED YOU INSTEAD?
A. (NODDING HEAD)
Q. DIDN'T YOU THINK HE KNEW WHAT HE
WAS TALKING ABOUT?
A. NO.
I WAS MAD AT THE SCHOOLS FOR
CATEGORIZING CIGARETTES WITH DRUGS BECAUSE I DIDN'T
WANT MY CHILDREN TO THINK I WAS USING DRUGS.
Q. DIDN'T YOU THINK YOU WERE USING
3343
DRUGS?
A. NO.
Q. LET'S GO BACK TO WHEN YOU MET
MR. BOEKEN, I JUST WANT TO GET SOME TIMING DOWN
HERE.
YOU MET HIM IN '77 AND YOU TOLD US
YOU GOT MARRIED IN '81; RIGHT?
A. YES.
Q. WERE YOU GOING TOGETHER THE WHOLE
WAY FROM '77 TO '81?
A. NO. WE DATED FOR A YEAR, WE BROKE
UP FOR A YEAR, AND THEN WE GOT BACK TOGETHER.
Q. WHICH YEAR DID YOU GET -- SEE, '77
TO '81, THAT'S MORE THAN TWO YEARS?
A. WE WERE BROKEN UP, I KNOW, IN
THE -- IN 1980, BECAUSE IT WAS FROM, BECAUSE WE GOT
BACK TOGETHER IN THE SUMMER OF '80, I GOT MARRIED
IN JANUARY OF '81.
SO IT WAS LIKE THE MIDDLE OF THE
YEARS.
Q. SO LET'S SAY '77, YOU MET FOR A
YEAR. AROUND '80 YOU WERE APART; IS THAT RIGHT?
A. UH-HUH. YES.
Q. YOU HAVE TOLD US THAT WHEN YOU MET
MR. BOEKEN, HE WAS DOING CONSTRUCTION AND I AM NOT
SURE WHETHER YOU SAID HE HAD ALREADY STARTED HIS
OWN PLACE OR HE WAS WORKING FOR SOMEBODY ELSE, BUT
ANYWAY, WHICH WAS IT?
3344
A. YES, HE WAS -- HE OR -- HE ALREADY
HAD HIS OWN BUSINESS GOING.
Q. WE HAVE ALL HEARD THAT HE'S NOT A
CONSTRUCTION WORKER ANY MORE. HAS IT BEEN A LONG
TIME SINCE HE DID CONSTRUCTION?
A. YES.
Q. DO YOU KNOW MR. MENDEZ?
A. YES.
Q. HOW LONG HAVE YOU KNOWN HIM?
A. 14 YEARS.
Q. HAS YOUR HUSBAND BEEN IN OIL OR
GAS, OR BOTH, LEASING BUSINESS FOR THAT LENGTH OF
TIME OR MORE?
A. YES.
Q. IS THAT HOW YOU KNOW MR. MENDEZ?
A. YES.
Q. DOES YOUR HUSBAND WORK ANY MORE?
A. NO. HE CAN'T WORK NOW.
Q. AT SOME POINT AFTER HE WAS
DIAGNOSED, DID HE MOVE HIS OFFICE INTO YOUR HOME?
A. YES.

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Digitized by http://industrydocuments.ucsf.edu/docs/nnxl0001

Q. BEFORE HE WAS DIAGNOSED, DID HE
HAVE AN OFFICE, I MEAN, YOU KNOW, LIKE A BUSINESS
OFFICE SOMEPLACE IN A BUILDING SOMEWHERE?
A. YES.
Q. HOW LONG HAVE YOU LIVED UP AT
TOPANGA?
A. JUST SINCE LAST AUGUST.
3345
Q. AUGUST OF 2000?
A. YES.
Q. LESS THAN A YEAR?
A. YES.
Q. HOW LONG -- WERE YOU IN PACIFIC
PALISADES BEFORE THAT?
A. YES.
Q. FOR ROUGHLY HOW LONG?
A. EIGHT YEARS.
Q. AND BEFORE THAT?
A. WE LIVED IN SANTA MONICA BEFORE
THAT FOR 12 YEARS.
Q. DOES THAT COVER THE WHOLE TIME WE
ARE TALKING ABOUT NOW?
A. YES.
Q. WHO IS YOUR HUSBAND'S FAMILY
DOCTOR?
A. DR. JOSHUA TRABULUS.
Q. WHO IS YOUR HUSBAND'S ONCOLOGIST?
A. DR. GREGORY SARNA.
Q. THIS IS JUST A LITTLE SLICE HERE.
HAS THE TREATMENTS FOR THE CANCER MADE YOUR HUSBAND
ILL?
A. EXTREMELY ILL. HE'S NOT THE SAME
PERSON.
Q. NOW, I KNOW -- ARE YOU OKAY?
A. YEAH.
Q. I KNOW HE IS RIGHT BEHIND ME NOW
3346
AND IF YOU WANT, I CAN ASK HIM TO LEAVE OR I CAN
ASK HIM TO STAY. I AM GOING TO ASK YOU TO JUST
TALK ABOUT HIM A LITTLE BIT AND HOW HE IS DOING AND
HOW HE IS NOT DOING. WOULD YOU RATHER HAVE HIM
HERE OR NOT HERE?
A. HE CAN STAY.
Q. WHY ISN'T HE THE SAME PERSON?
A. HE IS THE TYPE OF MAN THAT LOVED
WORK AND INTERACTING WITH MEN IN HIS WORK, I GUESS,
LIKE OLD-FASHIONED COUPLE. MY FATHER WAS A
BUSINESS MAN. I WAS ATTRACTED TO RICK BECAUSE, YOU
KNOW, ONE OF THE THINGS, SUBCONSCIOUSLY, YOU KNOW,
I WOULD HEAR HIM SPEAKING ON THE TELEPHONE ABOUT
BUSINESS, SUBCONSCIOUSLY THAT PROBABLY REMINDED ME
OF MY FATHER WHO WAS SORT OF AGGRESSIVE AND HE
LOVED HIS WORK AND HIS INTERACTION WITH HIS
BUSINESS BUDDY.
Q. HIS WHAT?
A. HIS BUSINESS BUDDY, ELVIS. YOU
KNOW, DOING -- AND HE NEVER WAS THE TYPE TO STAY
HOME, OH, GOD, I HAVE A COLD TODAY, AND STAY HOME
AND STAY IN BED. AND NOW -- AND I SWEAR HE NEVER
DID THAT ONCE.
Q. ONCE?
A. NEVER DID IT ONCE. HE NEVER -- AND
NOW HE LAYS ON THE COUCH AND MAKES A FIRE ALL DAY,

http://legacy.library.ucsf.edu/tid/whp07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

YOU KNOW, IN THE FIREPLACE. HE LAYS ON THE COUCH
ALL DAY. EVEN THOUGH THE OFFICE IS IN THE HOUSE,
3347
HE CAN'T -- HE'S NOT EVEN WORKING NOW. AND WE ARE
RUNNING OUT OF MONEY.
Q. ALL RIGHT.
LET ME DIRECT YOUR ATTENTION TO
SOMETHING ELSE NOW.
WAS MR. BOEKEN AN OUTDOORS KIND OF
GUY?
A. YES.
Q. AND I WANT TO, YOU DON'T HAVE TO
TAKE A LOT OF TIME ON THIS, BUT JUST THINK ABOUT
OVER THE YEARS THAT YOU HAVE KNOWN HIM, WHEN YOU
HAVE DONE STUFF WITH HIM, AND WHEN YOUR FAMILY HAS
DONE STUFF WITH HIM, IS IT TYPICALLY INDOORS KIND
OF STUFF OR OUTDOORS KIND OF STUFF?
A. OUTDOORS.
Q. GIVE US SOME EXAMPLES, PLEASE.
A. WHEN WE WERE DATING, HE INCLUDED MY
SONS WHO WERE, WELL, WHEN I GOT SOBER, 3 AND 7, SO,
SAY, 4 AND 8.
HE WOULD PLAN WEEKEND ACTIVITIES
THAT THEY WOULD ENJOY AND TAKE US PLACES WE HADN'T
BEEN BEFORE, LIKE TO A LAKE OR THE BEACH. I CAN'T
REMEMBER THE NAME OF THE LAKE, TO SPEND THE DAY.
HE TOOK MY SONS FISHING, AND HE
TOOK US CAMPING.
WE WOULD GO TO EITHER LAKE
ARROWHEAD OR BIG BEAR FOR THANKSGIVING VACATION.
HE TOOK THE BOYS TO -- THEY WOULD
3348
FISH AT BIG BEAR, HE WOULD TAKE THEM TO, THERE'S A
PLACE UP THERE WHERE THEY TEACH KIDS HOW TO DIRT
BIKE RIDE ON THOSE THREE-WHEELER KIND, A.T.C.
Q. A.T.V.
A. A.T.V.'S ON THE DIRT, THEY HAVE TO
TAKE A LITTLE TRAINING COURSE AND THEY CAN RIDE THE
TRAIL. AND HE TOOK THEM THERE.
AND HIS LIFE WAS CENTERED AROUND ME
AND MY SONS AND HE WOULD ALWAYS SAY, ABOUT MY
EX-HUSBAND, I CAN'T UNDERSTAND, HE HAS THESE TWO
BEAUTIFUL SONS, I DON'T UNDERSTAND WHY HE DOESN'T
DO ANYTHING WITH THEM. IT'S LIKE HE WAS THE
TYPE -- HE WAS BORN TO BE A FATHER. I DIDN'T HAVE
DAUGHTERS, SO I DON'T KNOW, YOU KNOW, HOW HE --
WHAT HE WOULD HAVE DONE WITH THE DAUGHTER. BUT HE
DID ALL THE FATHERLY THINGS, YOU KNOW, THE TALKS.
Q. I WAS SORT OF TRYING TO AIM YOU
TOWARD THE OUTDOORS MORE THAN THE FAMILY. BUT I
WILL GET THERE AS LONG AS YOU ARE ON FAMILY, HOW
OLD IS YOUR YOUNGEST BOY, THE ONE THAT THE TWO OF
YOU HAD TOGETHER?
A. NINE.
Q. SO HOW LONG HAD YOU BEEN MARRIED
BEFORE THE TWO OF YOU DECIDED TO HAVE YOUR OWN
CHILD?
A. TEN. TEN YEARS. THE SAME YEAR
THAT I WAS GOING TO BE TURNING 40, WE WERE GOING TO
BE MARRIED TEN YEARS, AND I HAD BEEN, I SUPPOSE,
3349
GUN SHY FROM ONE DIVORCE. SO I DIDN'T HAVE A CHILD
WITH HIM SOONER, NOT HAVING CONFIDENCE, MARRIAGES

http://legacy.library.ucsf.edu/tid/whn07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

3 LASTED FOREVER ANY MORE. BUT THEN WHEN IT WAS
4 GETTING TO BE TEN YEARS AND I WAS GETTING TO BE,
5 GOING TO BE 40, I DID SOLE SEARCHING AND REALIZED
6 THAT I FELT THIS MARRIAGE WAS GOING TO LAST
7 FOREVER, FOR A VERY LONG TIME, FOREVER, AND HE
8 HAD -- MY HUSBAND, RICK, HAD NEVER HAD ANY CHILDREN
9 OF HIS OWN OWN SO I MADE A CONSCIOUS DECISION TO
10 HAVE A CHILD WITH HIM.
11 Q. OKAY. THANK YOU.
12 SO NOW LET ME STEER YOU BACK TO THE
13 OUTDOORS, WHICH IS WHERE I WAS GOING.
14 I DON'T WANT YOU TO PUT WORDS IN
15 HIS MOUTH, AND I DON'T WANT YOU TO QUOTE HIM. BUT
16 JUST FROM BEING WITH HIM FOR 20 YEARS, IS HE AN
17 OUTDOORS GUY?
18 A. YES.
19 Q. OVER THE EARLY YEARS OF YOUR
20 MARRIAGE, DID YOU EVER SEE HIM GOING TO THE GYM OR
21 RUNNING OR DOING STUFF LIKE THAT?
22 A. HE WOULD GO TO THE GYM.
23 BUT HE COULDN'T RUN BECAUSE OF THE
24 SMOKING. HE WANTED TO. AND HE -- WHENEVER WE
25 WOULD BE DRIVING AND HE'D SEE PEOPLE RUNNING, HE
26 WOULD SAY, LOOK AT THAT, LIKE THAT GUY IS OLDER
27 THAN ME AND LOOK AT HOW HE CAN RUN AND HE WOULD
28 ALWAYS REMARK ON HOW HE ADMIRED THE PEOPLE WHO WERE
3350
1 OUT THERE RUNNING AND WISH HE COULD DO IT.
2 Q. WELL, DID HE EVER TRY, WHEN YOU
3 KNEW HIM?
4 A. IT WAS HARD FOR HIM TO TAKE LONG
5 WALKS.
6 Q. OKAY. ON ANY OCCASION WHEN HE
7 STOPPED OR TRIED TO STOP SMOKING, WAS IT EVER SO
8 THAT HE COULD RUN?
9 A. YES.
10 Q. DID HE EVER TELL YOU REASONS, DID
11 HE EVER, WHEN IT WAS TIME, WHEN HE HAD DECIDED HE
12 WAS GOING TO TRY TO STOP SMOKING, DID HE EVER TELL
13 YOU WHY HE WAS GOING TO STOP SMOKING?
14 MR. LEITER: OBJECTION, CALLS FOR
15 HEARSAY.
16 MR. PIUZE: I WILL WITHDRAW IT.
17 Q BY MR. PIUZE: WHEN HE TRIED TO
18 STOP SMOKING, DID YOU?
19 A. ONLY THE TIME THAT WE WENT TO
20 SMOKERS ANONYMOUS TOGETHER.
21 Q. WAS THERE SOME SORT OF A CHURCH IN
22 YOUR NEIGHBORHOOD IN SANTA MONICA THAT HAD SOME
23 SORT OF A SMOKE ENDING PROGRAM?
24 A. 7TH DAY ADVENTIST CHURCH.
25 Q. DID YOU EVER GO THERE?
26 A. NO.
27 Q. DID HE GO THERE?
28 A. YES.
3351
1 Q. DID IT WORK?
2 A. NO.
3 Q. I AM GOING TO POINT YOU RIGHT AT
4 1994, THAT WAS THE YEAR THAT MR. BOEKEN'S MOM DIED.
5 OKAY? DO YOU REMEMBER WHEN SHE DIED?
6 A. OH, YES. I WAS RIGHT THERE.
7 Q. WHAT DID SHE DIE OF?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

8 A. CANCER, LUNG CANCER.
9 Q. DID SHE SMOKE?
10 A. YES.
11 Q. SO WHEN MR. BOEKEN'S MOM DIED OF
12 LUNG CANCER AND SHE SMOKED, DIDN'T YOU TRY TO STOP?
13 A. NO.
14 Q. WHY NOT?
15 A. BECAUSE SHE WAS 83 AND I THOUGHT
16 THAT EVEN SMOKING, WE'D MAKE IT TO OUR 80'S. AND
17 SO, AND I HAD HEARD THE LINE, SMOKING KNOCKS TEN
18 YEARS OFF YOUR LIFE. AND I ALWAYS THOUGHT, WELL,
19 WHO CARES ABOUT THE LAST TEN YEARS. AFTER 83, 83
20 IS, IF I HAVE THE LIFE SHE HAD UNTIL 83, THAT WAS
21 FINE WITH ME.
22 Q. WELL, WHEN MR. BOEKEN'S MOM DIED,
23 DID YOU TELL HIM HE SHOULD STOP SMOKING?
24 A. NO.
25 Q. WHEN MR. BOEKEN'S MOM DIED, DID THE
26 TWO OF YOU SIT DOWN AND HAVE ANY KIND OF A
27 DISCUSSION ABOUT SMOKING OR NOT SMOKING?
28 A. NO.
3352
1 Q. 1994 OR EARLIER IN THE YEAR WAS
2 ALSO A YEAR WE HAVE HEARD WHEN THE SEVEN CHIEF
3 EXECUTIVES OF THE TOBACCO COMPANIES STOOD BEFORE
4 CONGRESS AND, AMONG OR THINGS, SAID THEY DIDN'T
5 KNOW THAT SMOKING CAUSED CANCER.
6 DO YOU REMEMBER THAT?
7 A. YES.
8 Q. WHAT DID YOU THINK ABOUT THAT?
9 MR. CARLTON: OBJECTION, RELEVANCE.
10 MR. PIUZE: I WILL WITHDRAW THAT
11 QUESTION.
12 THE COURT: FAIR ENOUGH.
13 Q BY MR. PIUZE: DID THE TWO OF YOU,
14 YOU AND MR. BOEKEN, WHEN THAT HAPPENED, DID YOU
15 HAVE ANY DISCUSSION WITH THAT, ONE WAY OR ANOTHER?
16 A. NO, WE DIDN'T TALK ABOUT IT, BUT --
17 Q. LET ME STOP YOU THERE BECAUSE THIS
18 ISN'T YOUR CASE, THIS IS MR. BOEKEN'S CASE. SO WE
19 WILL TALK ABOUT HIM FOR NOW, NOT YOU.
20 LOOKING BACK OVER 20 YEARS, IN
21 FACT, MORE THAN 20 YEARS, LOOKING BACK TO 1977 WHEN
22 YOU MET HIM, CAN YOU RECALL, YOU KNOW, SITTING DOWN
23 AND SORT OF TALKING WITH HIM OR HIM TALKING WITH
24 YOU AND ONE OF YOU SAYING TO THE OTHER, WELL,
25 SMOKING, SMOKING COULD KILL OR SMOKING CAN CAUSE
26 LUNG CANCER OR SMOKING WILL MEAN I AM PREMATURELY
27 DEAD, AND ONE OF YOU SAYING TO THE OTHER, SHOULD
28 STOP, YOU SHOULD STOP, YOU SHOULD STOP, WE SHOULD
3353
1 STOP, ANYTHING LIKE THAT?
2 A. NO.
3 Q. NOW, LET'S JUMP BACK UP. I GAVE
4 EVERYBODY A COLD.
5 LET'S JUMP BACK TO THE PRESENT,
6 SORT OF THE PRESENT. OKAY.
7 DO YOU REMEMBER HOW YOU FOUND OUT
8 THAT YOUR HUSBAND WAS BEEN DIAGNOSED WITH LUNG
9 CANCER?
10 A. YES.
11 Q. HOW?
12 A. HE WOKE UP WITH BRONCHITIS. THE

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/nnxl0001

13 DAY BEFORE HE SEEMED LIKE HE WAS FINE. HE WOKE UP
14 WITH REALLY, REALLY BAD CONGESTION. OUR DOCTOR IS,
15 OR INTERNIST IS IN A DIFFERENT NEIGHBORHOOD AND HE
16 DIDN'T FEEL WELL ENOUGH TO DRIVE THERE. SO HE WENT
17 TO UCLA. THEY HAD OPENED A LITTLE CLINIC NEAR
18 WHERE WE WERE LIVING. SO HE CALLED OVER THERE,
19 WENT OVER THERE, AND THE DOCTOR THERE TOOK A CHECK
20 X-RAY AND SHE IS THE ONE THAT FOUND CANCER.
21 Q. WAS THERE A WHILE AFTER HE WAS TOLD
22 HE HAD CANCER WHERE YOU TWO DIDN'T KNOW WHETHER OR
23 NOT IT HAD SPREAD?
24 A. OH, YES.
25 Q. HOW DID YOU FIND OUT IT HAD SPREAD?
26 A. HE WENT THROUGH TREATMENT, CHEMO
27 THERAPY AND RADIATION, AND THEN HE CONTINUED TO SEE
28 THE CANCER DOCTOR, THE MEDICAL ONCOLOGIST, AND HE
3354
1 TOLD HIM HE HAD PAIN IN HIS BACK, SO --
2 Q. LET ME STOP YOU FOR A SECOND.
3 I ASKED A TOO BROAD QUESTION. I
4 APOLOGIZE. LET ME REDIRECT THIS.
5 DO YOU KNOW WHAT LYMPH NODES ARE?
6 A. YES.
7 Q. EARLY ON, YOU KNOW, WITHIN A MONTH
8 OR SO OF THE TIME THAT YOU FOUND OUT THAT HE HAD
9 LUNG CANCER, WAS THERE A TIME WHEN YOU WERE WAITING
10 TO FIND OUT WHETHER OR NOT IT HAD SPREAD TO HIS
11 LYMPH NODES OR WHETHER HIS LYMPH NODES WERE
12 INVOLVED OR WORDS LIKE THAT?
13 A. YEAH, AT THE TIME OF THE LUNG
14 SURGERY, THEY REMOVED LYMPH NODES FROM UNDER THE
15 ARMPIT AND THEN THEY EXAMINED THOSE ALSO AND FOUND
16 THAT HIS CANCER HAD SPREAD ALREADY TO THE LYMPH
17 NODES.
18 MR. LEITER: I AM SORRY TO INTERRUPT, I
19 AM HAVING SOME DIFFICULTY HEARING THE QUESTIONS.
20 THE COURT: MR. PIUZE, HE IS HAVING
21 DIFFICULTY HEARING YOUR QUESTIONS.
22 YOU CAN STAND OVER THERE OR SPEAK
23 LOUDER. IT'S UP TO YOU.
24 Q BY MR. PIUZE: DID YOU KNOW WHAT
25 THAT MEANT?
26 A. YES.
27 Q. WHAT?
28 A. IT WAS BAD. IT MEANT THAT THE
3355
1 CANCER, THOUGH IT WAS GOOD NEWS THAT THEY COULD
2 EVEN DO SURGERY ON HIS LUNG AND REMOVE A PIECE OF
3 HIS LUNG WITH THE TUMOR, THAT -- BUT CANCER WAS
4 ALREADY LOOSE IN HIS BODY BECAUSE IT HAD GONE, IT
5 WAS FOUND IN THE LYMPH NODES AND VERY LIKELY HAS
6 SPREAD OTHER PLACES.
7 Q. HOW DID YOU FIND OUT ABOUT THAT?
8 A. THE DOCTORS TOLD US ABOUT THE LYMPH
9 NODES AND BY READING ALL THE LITERATURE AT THE
10 HOSPITALS, I LEARNED THAT, ABOUT HOW, THAT CANCER
11 METASTASIZES, IT SPREADS, CAN SPREAD TO OTHER PARTS
12 OF THE BODY. THAT EVEN WHEN THEY DO SURGERY, AND
13 ESPECIALLY IF IT IS FOUND IN THE LYMPH NODES THEN
14 IT IS VERY POSSIBLE THAT THERE ARE OTHER CANCER
15 CELLS THAT HAVE TRAVELED THROUGH THE BLOOD STREAM
16 AND MAY START TO GROW TUMORS OTHER PLACES.
17 Q. WHEN YOU LEARNED, AND I AM TALKING

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

NOW YOU, AS A COUPLE, NOT YOU, AS AN INDIVIDUAL, WHEN YOU LEARNED THAT THE DOCTOR, OR THE SURGEON HADN'T REMOVED IT ALL, AND THAT IT HAD SPREAD, I WANT YOU TO TELL THE JURY ABOUT YOUR HUSBAND'S REACTION WHO THAT.
A. HE BECAME VERY SAD AND SCARED.
THREE REASONS, ME, OUR SON AND HIS MORTALITY.
Q. STUPID QUESTION, BUT WHEN THAT HAPPENED, AND HE HEARD, OR YOU, AS A COUPLE, HEARD IT HAD SPREAD, DID HE HAVE A STRONG EMOTIONAL REACTION TO THAT?
3356
A. SHOCK, CRYING. HE HAD NEVER CRIED.
AND THEN IT BECAME A REGULAR THING TO BREAKDOWN, FOR HIM TO BREAKDOWN AND CRY.
Q. DID YOU TRY TO HELP HIM?
A. YES.
Q. DID HE TRY TO HELP YOU?
A. YEAH. BUT HE HAD BEEN HELPING ME A LONG TIME AND THE TABLES WERE KIND OF TURNED NOW AND I HAD TO HELP HIM MORE, DO MORE WITH OUR SON AND TAKE OVER.
Q. WHEN, IF I TOLD YOU LIKE OCTOBER, NOVEMBER, IN THAT AREA, OF 1999, FOR THE ORIGINAL DIAGNOSIS OF LUNG CANCER, DOES THAT SOUND ABOUT RIGHT?
A. YES. OCTOBER, YES.
Q. WHEN DID HE MOVE OUT OF HIS OFFICE, BUSINESS OFFICE, AND MOVE THAT BUSINESS INTO YOUR HOME, PLEASE.
A. WITHIN TWO TO THREE MONTHS. IT WASN'T TOO MUCH. HE WOULD LIKE, JUST FROM THE BEGINNING, GO TO THE OFFICE, COME BACK AND HAVE TO SLEEP. JUST COULDN'T GET ANYTHING DONE. SO HE FIGURED THAT IF IT WAS IN THE HOUSE, MAYBE HE COULD GET SOMETHING DONE WHILE HE FELT OKAY AND THEN GO TO SLEEP OR LAY DOWN WHEN HE DIDN'T FEEL ALL RIGHT.
Q. OKAY. GO AHEAD.
A. THEN -- BUT THAT PERIOD DIDN'T -- AS THIS PROGRESSED, HE COULDN'T DO ANYTHING AT ALL
3357
ANYWAY, EVEN THOUGH THE OFFICE WAS IN THE HOUSE.
Q. DID YOU KEEP THIS, THE TWO OF YOU, KEEP THIS FROM YOUR YOUNGEST SON?
A. NO. AT THE BEGINNING, WE EXPLAINED THAT WE HAD TO EXPLAIN SOMETHING BECAUSE THE TREATMENT WAS GOING TO MAKE HIM SICKER, LOOK SICKER, HIS HAIR WAS GOING TO FALL OUT. SO I PUT IT TO MY SON, I DIDN'T SAY THE WORD -- USE THE WORD "CANCER," BUT I SAID THAT DADDY HAS SOMETHING, SOME CELLS THAT ARE SICK AND THEY CAN GIVE HIM MEDICINE FOR IT BUT, I MADE -- TRIED TO MAKE IT LIGHT, AS IF THIS REALLY WEIRD THING IS, THAT THIS FUNNY THING THAT THE MEDICINE THAT THEY ARE GOING TO GIVE HIM TO MAKE HIM BETTER, TO FIX THE CELLS IS GOING TO MAKE HIM SICK FOR A WHILE. AND ON TOP OF THAT, HE, HIS HAIR IS GOING TO FALL OUT. SO I PREPARED HIM IN THAT WAY.
Q. SO KIDS ARE PRETTY SMART, AREN'T THEY?
A. UH-HUH. YES.
Q. DID HE COME BACK FOR MORE EXPLANATION?

http://legacy.library.ucsf.edu/tid/whr07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/nnxl0001

A. YES. WHEN THE CANCER METASTASIZED
TO OTHER PARTS OF THE BODY, HE SAID, DADDY, WHY
DIDN'T YOU GET, WHY DIDN'T YOU GET BETTER. AND WE
SAID AT FIRST IT WORKED.
AT FIRST WE THOUGHT IT WORKED
BECAUSE AT FIRST THEY TOOK CARE OF THE LUNG. BUT
3358
THEN WHEN WE FOUND OUT ABOUT THE SPINE AND THEN THE
BRAIN, THEN HE HAD TO LOOSE HIS HAIR AGAIN, SO,
YES, HE HAS SAID, ARE YOU GOING TO GET BETTER THIS
TIME DADDY, PROMISE?
AND MY HUSBAND SAID THAT HE WAS
REALLY GOING TO TRY TO GET BETTER AND HE WAS GOING
TO FIGHT TO GET BETTER BUT HE ACTUALLY SAID THAT HE
COULDN'T PROMISE BECAUSE ONLY GOD KNOWS.
MR. PIUZE: OKAY.
YOUR HONOR, IT JUST WENT TO 4
O'CLOCK, AND THIS IS AS GOOD A TIME AS ANY OTHER
TIME.
THE COURT: ALL RIGHT, LADIES AND
GENTLEMEN, THIS IS OUR WEEKEND. WE WILL SEE YOU
MONDAY. AND I WILL GET IT RIGHT THIS TIME, MONDAY
AFTERNOON AT 1:30. DON'T DISCUSS THE CASE WITH
ANYONE, JUST LEAVE YOUR NOTES PADS ON YOUR CHASE.

(AT THIS TIME, THE PROCEEDINGS
IN THE ABOVE-ENTITLED MATTER
WERE CONTINUED TO MONDAY, APRIL
23, 2001 AT 1:30 P.M.)

http://legacy.library.ucsf.edu/tid/whr07a00/pdf
Support http://www.industrydocuments.ucsf.edu/docs/nnxl0001